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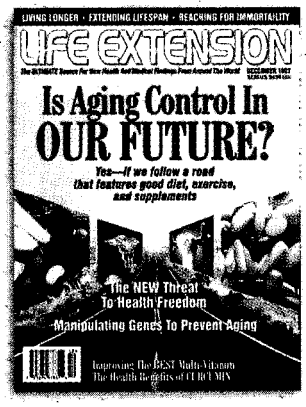
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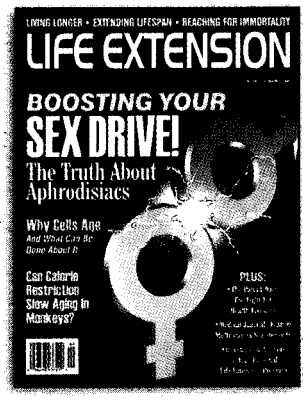
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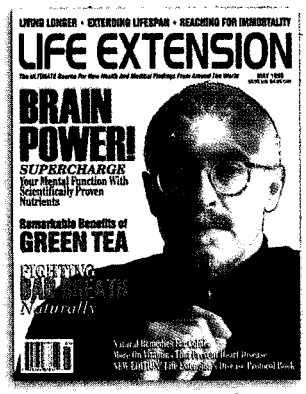
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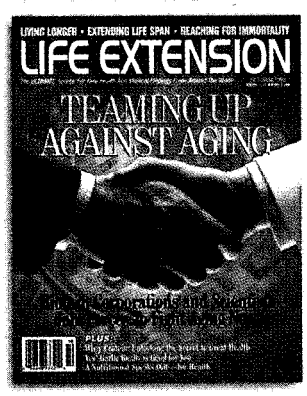

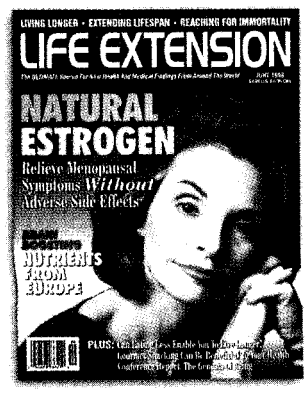
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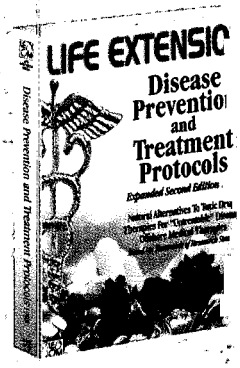

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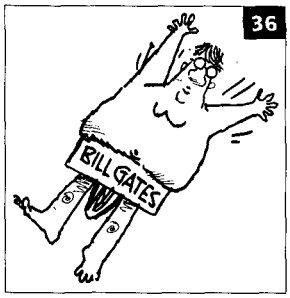

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Cover illustration: Jose Ortega

The Pleasantville Solution

The war on "sprawl" promises "livability" but delivers repression, intolerance—and more traffic.

By Virginia Postrel

If Bill Clinton and Al Gore denounced soccer moms, told us everything was better in the good old days, and demanded that we let their friends redesign our lives to fit their sense of morality, you might think they'd thrown away their political ambitions and joined the religious right. You would, however, be wrong.

Welcome to the war on "sprawl"—otherwise known as the suburbs.

Gore described the problem this way in a much-praised September speech: "Acre upon acre of asphalt have transformed what were once mountain clearings and congenial villages into little more than massive parking lots. The ill-thought-out sprawl hastily developed around our nation's cities has turned what used to be friendly, easy suburbs into lonely cul-de-sacs, so distant from the city center that if a family wants to buy an affordable house they have to drive so far that a parent gets home too late to read a bedtime story."

It's a bizarre tale, raising many questions: How exactly did those houses in "easy suburbs" catapult themselves miles away to become "lonely cul-de-sacs" reachable only by hours on the road? Why did that transformation make housing more expensive? How early do those kids go to bed? (The average commute remains no more than 20 to 30 minutes.)

Gore is clearer on one thing: The problem is that "we've built flat, not tall," putting houses and offices on inexpensive outlying land instead of packing them tighter and tighter in crowded, expensive cities. "Flat, not tall" is in fact the definition of "sprawl." The anti-sprawl critique is that houses with yards, shopping centers with ample parking, and commuters who drive to work are ruining the country.

"In too many places across America, the beauty of local vistas has been degraded by decades of ill-planned and ill-coordinated development," Gore said in January. "Plan well, and you have a community that nurtures commerce and private life. Plan badly, and you have what so many of us suffer from first-hand: gridlock, sprawl, and that uniquely modern evil of all-too-little time." (The breathtaking conceit that "all-too-little time" is a "uniquely modern evil" simultaneously exhibits great insight into baby boomers' psychology and gross ignorance of history and literature—the perfect combination, perhaps, for a Gore 2000 campaign.)

"Sprawl" is a strange issue with which to launch a presidential race: City planning is not a constitutional responsibility of the federal government, much less of the chief executive. And most voters prefer living in the suburbs. Yet Gore thinks he can win the White House on a platform that calls for the government to force everyone to live in townhouses and take the train to work. All he has to do is stick to the right rhetoric. If no one pays attention to the programs behind the slogans, the plan might just work.

After all, this moral crusade isn't plagued by peskily telegenic intellectuals who say what they mean. Its crusaders deliberately use phrases, such as "quality of life" and "livability," that mean one thing to them and something entirely different to the general public.

If you listen only to Gore's speeches, you'd think that the anti-sprawl campaign is about magically making all the nasty tradeoffs in life go away. Abandon "ill-planned and ill-coordinated development," and houses will be cheap everywhere. No one will ever sit in traffic. By reducing commuting costs, we'll even have more money to send those once-neglected kids to college (a point the vice president includes in every speech). We will all enjoy "quality of life" and "livability." Who could be against that?

Attacking "sprawl" is a way of blaming an evil, impersonal force for the tradeoffs individuals have made in their lives—most prominently the choices to work long hours and to buy elbow room. The anti-sprawl campaign simultaneously indulges baby boomers' guilt and excuses their life choices, treating them as victims rather than actors. It tells voters that they're bad parents who are destroying the earth, but then says that it's not their fault. The problem is "sprawl," which can be prevented by better planning.

Washington Post columnist E.J. Dionne, who is always looking for ways to rehabilitate technocracy, explains the issue this way: "Advocates of unplanned growth cleave to the idea of 'spontaneous order,' the view that the sum of all our individual decisions creates a better, more interesting and more exciting life....The alternative view is that a slew of individual choices taken together can create circumstances few of us like. Many move to the suburbs in search of larger, more affordable homes with yards and, often, better schools. Yet when so many people make the same decision, the suburban dream gives way to those choked roads, crowded schools and the loss of the very green spaces that inspired the journey beyond city limits.... Smart-growthers argue that better planning might get individuals more of what they want."

To paraphrase the president, Dionne's conclusion depends on what the meaning of "they" is. If "they" are the individuals who moved to the suburbs, then Dionne's "smart-growthers" are engaging in the Big Lie. Proposals to slash road building, require denser construction, and punish private auto commuting will leave suburbanites with *more* traffic congestion and less chance for private green space. There are no "affordable homes with yards" in the smart-growth utopia.

If "they" refers to "smart-growthers" themselves, however, then Dionne's argument is accurate. *They* will get more of what they want: more multiunit housing, more traffic congestion, more collectively owned open land, more fixed-rail transit. "Smart growth" means confining family

life to dense cities with little privacy so that the countryside can be left open for wildlife, recreation, and a few farmers.

At a recent conference of high-tech executives in Austin, Texas, local environmentalist Robin Rather attacked sprawl for degrading the area's quality of life, threatening its ability to compete for employees with such "hell holes" as Los Angeles, Boston, and San Jose. "Sprawl is the number one enemy of the environment," she declared, rallying attendees to endorse "transportation and mobility measures that reduce sprawl."

It was clear from the conference, as it is in Gore's speeches, that what listeners really want is less traffic congestion. Austinites are unhappy that their 15-minute commutes have stretched to 30 minutes as the city has grown. And I know enough people who've moved from California to Austin to know what "quality of life" means to the transplants Austin businesses are eager to attract: Austin isn't boring, like a lot of other small cities, but you can still buy a big house for around $200,000, compared to $750,000 or more in Silicon Valley or Los Angeles (where the yard will be much smaller). That means, among other things, that it takes only one professional income to support a family in a comfortable suburban lifestyle.

The anti-sprawlers have something entirely different in mind when they talk about dealing with traffic or protecting quality of life. They want to pile everyone on top of each other, make traffic as slow and congested as possible to discourage driving, and keep housing out of farmland. Such anti-sprawlers want everyone to live the way I do: in an urban townhouse off a busy street, with no yard but plenty of shops and restaurants within walking distance. (Portland, Oregon's Metro planning authority, among the most influential "smart growth" authorities, has in fact acknowledged that Los Angeles "displays an investment pattern we desire to replicate," with its high density and low per capita road mileage.) That lifestyle appeals to cosmopolitan professionals with no kids and no particular desire for peace and quiet, but it is not how most Americans want to live.

To anti-sprawl technocrats, the single-family home is almost as evil as the automobile. Thus a study highlighted on the Sierra Club's smart-growth Web site, "The Conservation Potential of Compact Growth," celebrates multiunit housing: "Sharing walls shares and saves heat. Exposing less wall and roof area to the sun reduces summer air conditioning loads.... The single family houses consume 4 times as much land for streets and roads and 10 times as much for the houses themselves. The single family houses use nearly 6 times as much metal and concrete, the mining of which threatens many of our natural areas." The study's ideal city is San Francisco, with densities of 50 to 100 units per acre, but it also praises the wonders of New York City, which "even with its bright lights and cold climate...uses half as much energy per capita as the US average."

This conflict is not, as Dionne would have it, simply a matter of unintended consequences. It is a conflict of visions. Smart-growthers have no sympathy for suburban family life, which they find wasteful and sterile. They disapprove not merely of the congestion generated when people flock to a new area, but of the *reduction* in congestion in the city created at the same time.

And they hate the automobile, which they view more as a source of sin than as a mode of transporation. Rather than reduce traffic, they seek to increase it, blocking new roads and putting transportation money into unused mass transit, especially rail. Given enough pain, they hope, people will get out of their automobiles. "As traffic congestion builds, alternative travel modes will become more attractive" is how Minnesota's Twin Cities Metropolitan Council put it, justifying a decision not to build any roads for the next 20 years. Congestion "signals positive urban development," notes Portland's Metro. (See "Dense Thinkers," January.)

"Smart growth" encourages transportation priorities set by noisy political action groups, with no consideration of demand. The pressure works. "We expect a 100 percent increase in our population by 2020, but our plan calls for only a 33 percent increase in highways," brags Texas state Sen. Gonzalo Barrientos, chairman of the Austin Transportation Study, which has developed a 25-year plan for the area. Responding to a Sierra Club critic, he says ATS has also "set aside 15 percent of our discretionary funds for bicycle and pedestrian projects although only 5 percent of the adult public reports using those methods to get to school or work."

The anti-sprawl campaign isn't just a bunch of slogans. It's a vision of one best way to live, and the determination to impose that way by political action. Like the black-and-white establishment in the movie *Pleasantville*, the anti-sprawlers are upset with the changes unleashed by other people's choices. And as in the movie, they intend to convene the right sorts of people to pass "democratic" regulations to keep everything "pleasant"—with no room for deviation. Instead of banning double beds and colored paint, as the movie's establishment did, they'll ban free parking and new single-family houses. They, too, will make sure there's nothing "outside Pleasantville," no homes outside their jurisdiction or control.

William McDonough, dean of the University of Virginia school of architecture and a leading advocate of "smart growth" planning, describes an example of the process. In Williamsburg, he had "140 citizens working at 10 different tables to articulate 10 different plans....The plan that we ended up with is their plan....You now have 150 citizens who are key players in each sector walking around with the same mental image of what the plan is. If somebody says, 'What's the plan?,' they can say, 'Well, that's going to be our night life center and this is going to be a place for a series of nice five-minute walks and here's our transportation system.'"

In other words, well-connected "key players," with the time and patience to sit in meetings, will decide just what the future will look like. The other 12,000 or so residents of Williamsburg have no say in the matter.

The anti-sprawl campaign is about telling Americans how they should live and work, about sacrificing individuals' values to the values of their politically powerful betters. It is as coercive, moralistic, and nostalgic as anything Bill Bennett, Robert Bork, or Gary Bauer ever proposed. It is just a lot less honest.

For more background on the sprawl debate, see the new Breaking Issue on Reason Online, *at www.reason.com/bisprawl.html.*

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Populist Psychology

Why Ralph Nader hates Jesse Ventura

By Nick Gillespie

In January, Jesse Ventura was sworn in as governor of Minnesota in the most refreshingly déclassé inauguration since 1829, when Andrew Jackson's supporters wheeled a giant cheese into Washington, D.C., as part of the celebration.

What one account called "Ventura's two-week-long Power Bar-and-blues-fueled inaugural marathon" included the former professional wrestler, who shaves his head, releasing a bald eagle in his hometown of Brooklyn Park; a concert for 14,000 people featuring teenage guitar phenom Jonny Lang and honky-tonk hero Delbert McClinton; and Ventura loudly exclaiming "Hooya!" after delivering his first official address.

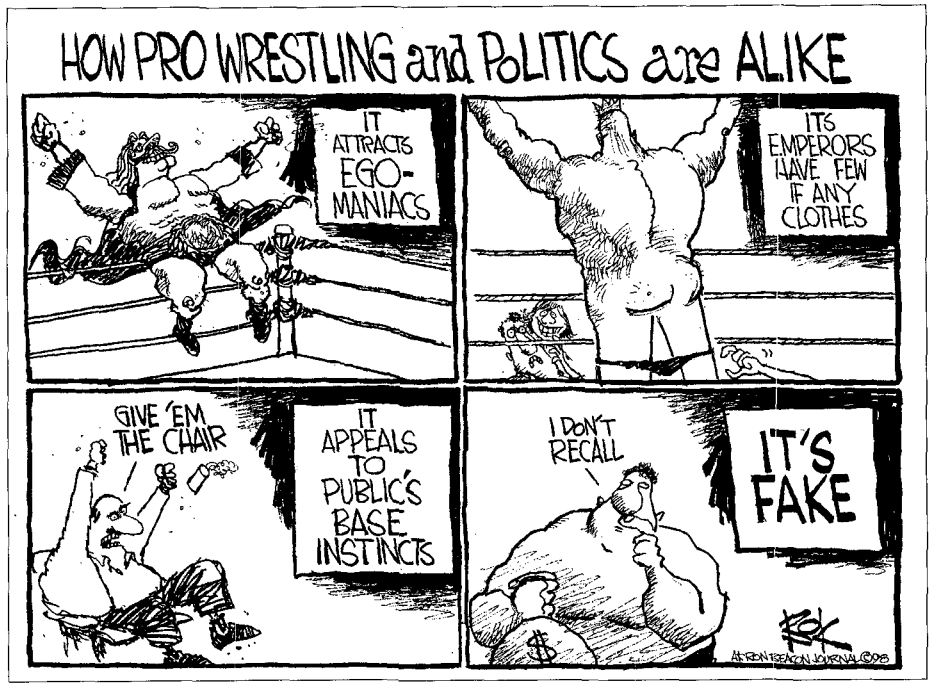
"We wanted to include as much of Minnesota as we could," explained the Gopher State's new first lady, Terry Ventura. "We want[ed] everyone to come the way they're most comfortable at a party—tux, tennis shoes, or biker leather."

Now, of course, the party's over and it remains to be seen if Ventura can deliver on the promises of his campaign. But whether he actually accomplishes anything legislatively during his tenure, he has already achieved this much: He has discombobulated elitists who mistrust and misunderstand the "common people" for whom they often claim to speak.

While voters apparently responded to a combination of rather centrist substance (Ventura has pledged to return budget surpluses to taxpayers and improve public schools) and blunt style (his most memorable TV ad featured a Ventura action figure beating the bejeezus out of an "Evil Special Interest Man" doll), such analysts see simply one more lamentable manipulation of *Boobus americanus*.

Consider Ralph Nader, founder of Public Citizen and an advocate of regulating virtually all economic activity (save for that of the trial lawyers who so generously support his various operations) in the name of social justice. Although Nader has long employed classic populist rhetoric by claiming to give power back to the "people," Ventura's triumph using similar language inspired mostly fear and trembling in the self-styled consumer advocate.

In a January column for the *San Francisco Bay Guardian*, Nader mused over the implications of Ventura's victory, one of which was wrestler Hulk Hogan's subsequent (and splendidly Dadaist) an-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nouncement that he was considering running for president. "Was farce replacing tragedy?" wondered Nader.

While one might assume that a self-styled outsider such as Nader would at least cheer a significant success by any third-party candidate, Nader instead warned darkly, "There are potential voters in this country who might respond to a rough-hewn, no-nonsense candidate....Campaign consultants have used Madison Avenue techniques to create the slick images that sell their candidates."

Never mind that Ventura ran a shoestring operation and that "slick" does not quite capture his personality (his most popular campaign slogan was "You Can't Legislate Stupidity") or his presentation (when a *USA Weekend* interviewer characterized professional wrestling as "fake," Ventura replied, "What if I kicked the shit out of you? Then I'm not a fake, am I?").

Nader's negative reaction is not without reason: Ventura taps into the feeling that Americans suffer not from too little state presence in their lives but from too much. "Government cannot be your parent," the governor has told voters who complain they can't afford housing and insurance. "There's too many laws altogether," he told Jonathan Rauch of *National Journal.*

But for Nader, Ventura's message of a more limited government cannot adequately explain his success. Instead, the election drives home the point that "the real is already mixing with the unreal in Washington and Hollywood and on Madison Avenue"—a situation which, doubtless, can be sorted out only by those few people not likely to be taken in by the "slick images" of "rough-hewn, no-nonsense candidate[s]."

For American University historian Michael Kazin, Ventura's electoral success raises related but slightly different concerns. In a widely reprinted December oped that was originally published in the *Los Angeles Times,* Kazin bemoaned the "thoughtless" application of the term *populist* to Ventura and other politicians who simply "challenge the conventional wisdom in the name of 'the people.'"

In the late 1890s, Kazin wrote, "the original Populists made clear where they stood: The enemy was an ungodly 'money power,' composed of banks, big corporations and stock exchanges, that conspired to cheat hard-working, productive Americans out of what they had earned....[The Populists] demanded easier credit, state ownership of railroads, an end to injunctions against labor unions and a progressive income tax." (One can perhaps forgive Kazin, author of *The Populist Persuasion: An American History,* for having proprietary interest in the term *populist.*)

Kazin disapprovingly quotes the governor as saying his dream is that Minnesotans will say, "When Jesse Ventura was around, 'I didn't even notice the government.'" All Ventura "has in common with the original Populists," concludes Kazin, "is his talent for ridiculing the powers that be. Their...rebellion led to reforms that made America a more humane and egalitarian society. Unless Ventura finds a populist program to match his style, he might only provide his constituents with a few laughs during a long and brutal winter."

Kazin is, of course, right to note that Ventura's policy proposals hardly track along old-time Populist lines. And yet he misses the far more important point that, at the end of the 20th century, "money power"—indeed, power in general—is far more concentrated in government hands than in corporate ones. If populism is at all about articulating fears of "hard-working, productive Americans," then Ventura is a fitting spokesman.

The people of Minnesota—and the rest of the United States—have far fewer reasons to resent, say, Maplewood-based 3M or the owners of Bloomington's Mall of America than they do the local, state, and federal governments that levy all sorts of regulations on them and combine to take between one-third and two-fifths of their income in the form of taxes. (It's worth pointing out that one reason governments hold so much power is the success of Populist ideas in previous times.)

To be sure, it's too early to tell whether Jesse Ventura will have any sort of lasting impact on Minnesota or national politics. But his very election is a marker of the long road politics has traveled during the American Century—and an indicator that "the people" have once again gotten ahead of their supposed guides.

REASON NEWS

■ We're delighted to welcome Jesse Walker as REASON's new associate editor. A longtime contributor to REASON, Jesse was most recently a Warren T. Brookes Fellow in environmental journalism at the Competitive Enterprise Institute in Washington, D.C. His most recent article for REASON was "Jacobean Tragedy" (July), which discussed the misuse of Jane Jacobs' work by "new urbanist" city planners.

■ **Attention college students:** REASON is accepting applications for the 1999 Burton C. Gray Memorial Internship. The intern works at least 10 weeks in our Los Angeles office and receives housing, a stipend of $2,000, and up to $400 in travel expenses. The job includes reporting and writing for REASON, helping with research, proofreading, and other magazine-related tasks. To apply, send your résumé, up to five writing samples, and a cover letter to Gray Internship, c/o Mariel Garza, REASON, 3415 S. Sepulveda Blvd., Suite 400, Los Angeles, CA 90034. The deadline is **March 1, 1999.**

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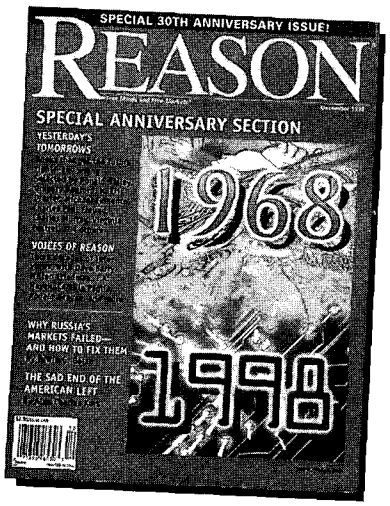

Russian Reform

In "When Property Is Theft" (December), Edwin Dolan ascribes Russia's failure with capitalism to a dysfunctional court system that does not protect property rights and a corrupt banking system that puts profits before stability. Dolan sees a long period of drift and experiment until the "government" (some future government) stops "enriching the ruling class at the expense of ordinary people."

After a steady stream of articles on government as the problem and market forces the solution, it is startling to find REASON suggesting that the private sector can be at fault and in dire need of government intervention. Of course libertarians have always believed that the little government they would allow should uphold property rights and enforce contracts, but was it ever thought that free-minded individuals (bankers, no less) would conspire for quick profits at the expense of the national economy?

Perhaps the "answer" lies back at the beginnings of laissez faire, as conceived. People will pursue their own self-interest, constrained only by market forces. According to Dolan, however, market forces are not in place in Russia and will have to be imposed by a determined government. Apparently the invisible hand is not self-starting; it needs to be set up and regulated, at least until there are appropriate institutions and the avarice of the population has cooled.

Denton Porter
Long Beach, CA

Edwin Dolan replies: In asking whether the invisible hand is "self-starting," Denton Porter raises a point that is at the heart of the "who lost Russia" debate now raging among Western observers of that country's efforts at reform.

There are three points of view:

1) Yes, it is self-starting if only government would get out of the way and dismantle such barriers to enterprise as the bad tax system, corrupt bureaucrats, protectionism, etc.

2) No, it is not self-starting, because Russia lacks the "soft infrastructure" of a market economy, e.g., civil courts, property protections, and rational accounting standards, which took centuries to evolve in the West but should have or could have been imposed by government fiat if only Russian reformers and their Western advisers had recognized them as a high priority.

3) No, the invisible hand will not self-start in Russia, because of cultural and ethical factors, such as lack of trust, prevalence of "black envy," dominance of the "guardian" moral syndrome over the "commercial" moral syndrome, and a history of authoritarianism under czars and commissars. Holders of the third view are the real pessimists because, unlike holders of the first two, they don't see any possibility that government could help either by stepping aside or by imposing solutions.

My own view has changed over time. When I arrived in Russia in 1990, I, as a good libertarian, was a strong adherent of the first view. I now lean toward the third, although I think there is some truth in the second in terms of misplaced priorities of both the Russian government and its Western advisers.

By the way, Russian bankers are not, for the most part, "free-minded individuals" but sophisticated con artists who have systematically defrauded their depositors, creditors, and minority shareholders.

Radon Reaction

Concerning "Gaseous Menace" (December), there is a radon study that Kenneth Silber did not mention. Bernard L. Cohen, a professor of physics at the University of Pittsburgh, headed up a 10-year study of radon and lung cancer. He looked at radon concentrations and lung cancer deaths in more than 1,600 U.S. counties.

The results surprised Cohen, who was sure radon caused lung cancer. The counties that had the highest radon concentrations had the lowest lung cancer death rates. And the counties with the lowest radon concentrations had the highest lung cancer death rates. Cohen did not want to believe the results. He tried to find some factor to prove the study wrong. He could not find one.

Cohen's conclusion: High level radioactivity kills, but low level radioactivity does not; it is beneficial.

Everett DeJager
Cincinnati, OH

To test the linear–no threshold theory (LNT), I developed a compilation of radon measurements from available sources which gives the average radon level in homes for 1,729 U.S. counties, comprising about 90 percent of the total U.S. population. Plots of age-adjusted lung cancer

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mortality rates vs. these radon levels show an unquestionable tendency for lung cancer rates—with or without correction for smoking prevalence—to decrease with increasing radon exposure, in sharp contrast to the increase expected from the fact that radon can cause lung cancer.

In quantitative terms, the theory predicts an increase at a rate of 7.3 percent per unit (pCi/L) of radon exposure, whereas the data indicate a decrease of 7.7 percent, with an uncertainty of only 0.5 percent. This finding started a study that extended over many years.

One problem was that this is an "ecological study," relating the average risk of groups (county populations) to their average exposure. In general, the average dose does not determine the average risk, and to assume otherwise is what epidemiologists call "the ecological fallacy." However, it is easily shown that the ecological fallacy does not apply in testing LNT. All other problems with ecological studies that have been discussed in the epidemiological literature have also been investigated and found not to be applicable here.

All explanations for the discrepancy that we could develop or that have been suggested by others have been tested and found to be grossly inadequate. Three independent sources of radon data have been used, but all give the same result. Three different sources of data on smoking prevalence similarly fail to explain away the finding. In fact, even a perfect negative correlation between radon and smoking prevalence cannot eliminate the discrepancy.

Effects of confounding were studied for over 500 potential confounding factors, but these did little to explain our discrepancy. For example, the strong negative correlation between lung cancer rates and radon exposure is found if we consider only the very urban counties or only the very rural; if we consider only the richest counties or only the poorest; if we consider only the counties with the best medical care or only those with the poorest medical care; if we consider only the wettest counties or only the driest; if we consider only the warmest counties or only the coolest; and so forth for all 500 potential confounding factors. It is also found for all strata in between—for example, considering only counties of average wealth, only counties of average medical care, only counties of average temperature, etc. It is also found if we consider only counties in a given section of the country.

The only plausible explanation I can find for this discrepancy between LNT and the observations is that the linear–no threshold theory fails, grossly overestimating cancer risk in the low dose, low-dose rate region. There are no other data capable of testing the theory in that region.

Bernard L. Cohen
Physics Department
University of Pittsburgh
Pittsburgh, PA

Note: This is a condensation of a paper by Cohen, "Test of the Linear–No Threshold Theory of Radiation Carcinogenesis for Inhaled Radon Decay Products," Health Physics, *68 (1995), pp. 157–174.*

CEO spoken here.

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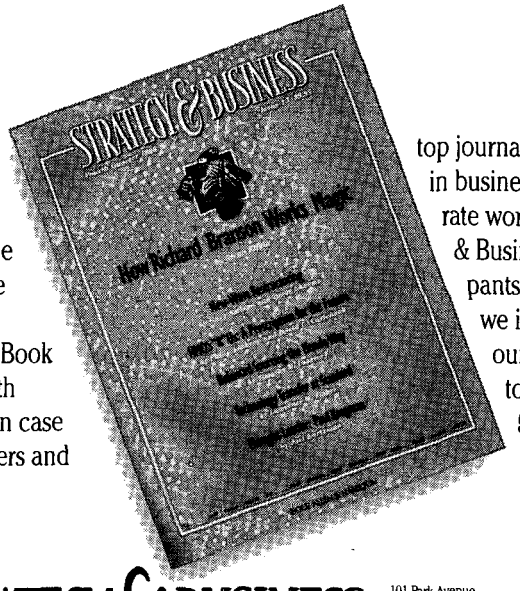

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THE NEW REPUBLIC
We beg to differ.

ARSN98

The article about radon was an excellent contribution, but I have one possible correction. I believe that, although radon is an alpha emitter, this radioactivity is not the source of its suspected harmful effect.

I believe the danger from radon, and the reason it is more dangerous in the lungs, is due simply to the chemical nature of its ultimate daughter. Radon emits an alpha and mutates to polonium. Polonium is also an alpha emitter and, in turn, quickly mutates (with a half-life of several minutes or less, depending on the isotope) to lead. I believe it is the deposition on lung tissue of metallic lead from radon that is believed to cause lung cancer, not genetic mutation caused directly by energetic alpha particles.

Thomas Cunningham
NASA Jet Propulsion Laboratory
Pasadena, CA

Kenneth Silber replies: My article's fourth paragraph pointed out the correlation between high residential radon levels and low lung cancer rates in regions such as New England and the Rocky Mountain states. I also noted that some scientists speculate that radon can help prevent lung cancer. While I did not specifically cite Bernard L. Cohen's research, I did take it into account, along with other studies of radon's health effects.

In reply to Thomas Cunningham's letter, both radon's alpha emissions and its daughter products have been cited as possible health threats.

Taxing Thoughts

As a former Libertarian Party candidate who ran on a tax reform platform twice, I can testify to the conclusion John Hood reached in "Tax Reform Schools" (November). Discrete, incremental, and simple tax policies are more likely to succeed with voters and officeholders. One strategy Mr. Hood did not mention was to support a site value tax (a tax on land only) as a substitute for the real estate tax (a tax on both buildings and land), personal property tax, income tax, and sales tax. It has several advantages: It simplifies administration and reduces administration costs; it limits total government expenditures; it is comprehensible to the average voter; it reduces the average person's tax bill; and as Milton Friedman has pointed out, it is the least objectionable form of taxation because it does not strike at production, i.e., work, saving, and investing. I would recommend it to any tax reformer.

Paul E. Gagnon
Franconia, VA

CORRECTION
In "Dark Bedfellows" by Walter Olson (January), a word was dropped from a phrase on page 64, changing its meaning. The phrase should have read, "a pre-Enlightenment culture that has never given up its claims to authority and is staging something of a comeback."

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– Jerome C. Arnett, Jr., M.D.
Medical Sentinel

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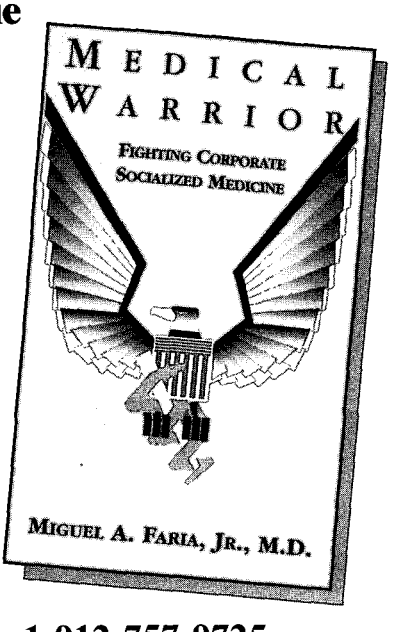

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French Twist

By Ryan H. Sager

If you thought the French were strange for liking Jerry Lewis, get a load of this: The French government is cracking down on people who work too much.

Employees trying to work more than the legal limit of 39 hours a week can expect to be harassed by the government, reports *The Washington Post.* Labor inspectors have been found counting cars after hours in parking lots, checking office entry-and-departure records, and grilling people about their work schedules. Several companies have been fined for allowing employees, including managers, to work longer than is legally allowed. As a researcher at the Center for the Study of Labor in Paris told the *Post,* "Even a top manager does not have the right to work more than [they're legally allowed to]. It has to do with security and public order."

Of course, maintaining "security and public order" threatens to disrupt France's way of life in another way that's not entirely lost on Frenchmen. "We are in worldwide competition. If we lose one point of productivity, we lose orders," Henri Thierry, an executive at Thomson-CSF Communications, told the *Post.* Thomson-CSF was fined the equivalent of $2 million for 2,000 overtime law violations in three months. Thierry is even less pleased with a proposal favored by the Socialist government to shorten the legal work week to 35 hours. "If we're obligated to go to 35 hours, it would be like requiring French athletes to run the 100 meters wearing flippers," he said. They wouldn't have much chance of winning a medal."

Home-Invasion Ruling

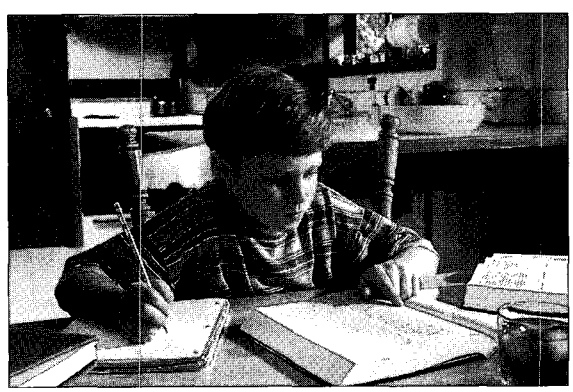
By Mariel Garza

Christmas came early last year to the home-schooling families of Lynn, Massachusetts. In December, the commonwealth's top court ruled that a law giving public school officials expansive rights to visit home-school households was unconstitutional.

The decision in *Michael Brunelle, et al. v. Lynn Public Schools* ended seven years of legal battles. The court ruled that the school district's policy—which essentially allowed officials to enter a home-schooler's residence at will—violated federal and commonwealth protections against unreasonable searches and seizures.

"This is a big victory for home schooling not just in Massachusetts but across the country," said Michael Farris, president of the Virginia-based Home School Legal Defense Association, which served as the plaintiffs' counsel. The association's main fear was that a decision in favor of the school district would have given a green light to similar policies in other parts of the country. By Farris' count, school districts in about a dozen states were likely to adopt similar requirements if the Lynn school district prevailed. Indeed, other states, including Rhode Island, New York, and South Dakota, have already tried to pass similar laws.

"We've picked them off one by one, normally through legislative means," Farris said. "We've used the legal system successfully at times, but other times it's been the predicate for legislative action."



Steven Pustell, whose family was one of the two represented in the lawsuit, was thrilled with the outcome. "It reaffirms the independence of home-schooling parents to raise their children the way they [see fit], without unwarranted

Balance Sheet

By Rick Henderson

ASSETS

▲ **Boom Time.** While Europe, Asia, and Latin America struggle with an economic meltdown, the U.S. economic expansion sets a peacetime record. What are we doing right? Low inflation, no new taxes, relatively liberal trade and immigration policies, and an entrepreneur-friendly regulatory environment all help. Gridlock in Washington does its share, too.

▲ **Temporary Truce.** Free-traders breathe a bit easier as the Clinton administration averts a trade war over steel. The White House refuses to place temporary tariffs or quotas on cheap imports from Russia, Brazil, Korea, and other nations reeling from the economic slump. Stay tuned, though—the steel lobby may get its friends in Congress to pass limits anyway.

▲ **Vintage Smarts.** Grab a corkscrew: New research suggests moderate wine consumption is good for the brain. In the journal *New Scientist,* Italian researchers say a chemical found in wine stimulates an enzyme that helps regenerate brain cells. Savoring a glass or so of wine daily could help stave off diseases like Alzheimer's and Parkinson's.

▲ **Sentence Fragments.** Michigan lawmakers gut one of the nation's toughest mandatory sentences for nonviolent drug offenders. The legislature pares back the "650 lifer" law, which previously forced judges to give life sentences to anyone caught with more than 650 grams of heroin or cocaine. Current and future "650" offenders will serve no more than 20 years.

▼ Takings' Exception. The California Supreme Court says Santa Monica's rent control law doesn't violate the U.S. Constitution's Takings Clause. Even though landlords can't hike the rent of current tenants, the majority noted that the law does allow slightly higher rents on vacant units. Landowners plan an appeal to the U.S. Supreme Court.

▼ Small Ball. Watch that federal budget surplus slowly disappear, as Bill Clinton tries to deflect attention from scandals by pushing "little" initiatives. Along with tax credits for nursing home care and new splurges on after-school programs for kids and missile defense, Clinton wants to spend as much as $1.5 billion a year buying up vacant property so it can't be developed.

▼ Limousine Chasers. Plaintiffs' lawyers continue to hit the litigation jackpot. The online publication *Lawyers Weekly USA* (www.lawyersweekly.com) reports that the top 10 verdicts awarded to individuals in 1998 totaled $2.8 billion, compared with $750 million in 1997. What types of cases win big bucks? Employment claims and medical malpractice each made the list three times.

▼ Cut Off. For the second straight year, President Clinton asks Congress to make the allowable blood-alcohol level for drivers 0.08 percent. Federalism concerns aside, a January study by researchers at the University of North Carolina shows no evidence that lowering the blood-alcohol level from 0.10 percent has reduced alcohol-related traffic deaths in the Tarheel state. A December study commissioned by the New Jersey Senate reached a similar conclusion.

government intrusion," he said.

Books Galore

By Charles Paul Freund

Not enough books to choose among? Could be. Book superstores such as Borders may have 150,000 titles and online sources such as Amazon.com claim to offer a million in-print books. But nearly all these titles share one limiting factor: They're in print from American publishers. Readers in search of books published overseas have a hard time getting them, and their usual solutions (like asking globe-trotting friends to bring books back for them) haven't changed much since Gutenberg.

The Internet, however, is upgrading that tradition. Barnes & Noble has teamed up with Bertelsmann A.G., the German book conglomerate; they plan to offer books in a variety of languages via Barnesandnoble.com. A spokesman for the venture told *The New York Times* that customers eventually would be able to order almost "any book on the planet." Bertelsmann also plans its own Europe-based multilingual book site.

In the meantime, Amazon.com has already established two comprehensive sites offering hundreds of thousands of titles: Amazon.co.uk for British works and, on Bertelsmann's turf, Amazon.de for German books (*Klicken Sie Hier!*). Of course, the Internet has long been teeming with specialized foreign book sites, from a site selling New Zealand's 619 local books in print to one run by an association of Dutch second-hand dealers.

These developments are of significance well beyond the polyglot bookworm community. Old-line gatekeepers may be bemoaning a purported wilting in book culture, as major publishers and critics from Manhattan to Milan lose their prestige and power. Meanwhile, a largely unremarked revolution in cultural opportunity continues. Technology, far from supplanting reading culture, is reinvigorating it: Authors and publishers are able to reach ever more diverse markets, while the choice available to readers grows ever larger. Now it's global, and available to them with a single click.

Pork Chap

By Michael W. Lynch

Sen. Richard Lugar of Indiana is on a mission. He wants the federal government to spend more on pork.

"The current pork market condition presents a good opportunity for the Bureau of Prisons to increase purchases of pork," wrote the failed Republican presidential candidate to Attorney General Janet Reno on December 4, 1998. His pitch to Agriculture Secretary Dan Glickman was even more direct: "I am writing to urge you to consider ▶

QUOTE

"Democratic rights should be restricted to those who believe in democracy. The National Front should not be allowed to transmit any propaganda."
—British M.P. Piara Khabra, commenting on the (racist) group's plans to circumvent laws banning political broadcasting and to transmit its programs to Britain from America, on the British TV show *The Express*, December 13, 1998

BRICKBATS

◆ If you find yourself making a long driving trip this year, keep an eye out for lost bridges. A report by the Department of Transportation found that the federal government can't account for almost half of the 10,000 or so bridges that it owns. If you do find yourself driving across a federally owned bridge, take extra care. Of the bridges that the feds can find, nearly a quarter haven't been inspected within the last two years, as required by law. And even the bridges that have been inspected may not be in great shape. The DOT did spot inspections of 34 inspected bridges and found that 16 didn't match the information in the official report. Some didn't have the required weight-limit signs posted. Others were designated as "should be closed to traffic" but were in fact open.

◆ In Parma Heights, Ohio, the local Hooters restaurant is fighting the city over a promotional display. The restaurant put a 75-foot inflatable crab on its roof to alert customers to a crab-leg special. The city says the crab violates zoning rules, and it has threatened to jail the manager if the creature isn't removed. But Aaron Gausepohl, the manager, seems prepared to go to jail for his display. "This is America. We can have big crabs if we want," he said.

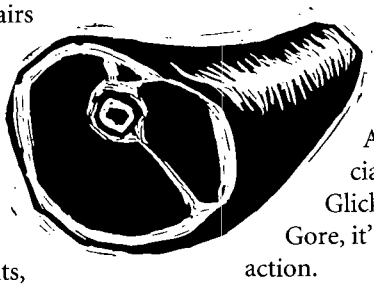
◆ A blind San Francisco man has sued the local mass transit commission, claiming the agency's Web site violates the Americans with Disabilities Act because its heavy reliance on graphics and art makes it hard for the visually impaired to use.

Chip Bok

LOOK, THE SENATE WON'T THROW HIM OUT ANYWAY, SO IMPEACHMENT REALLY ONLY MEANS CENSURE.
WHAT'S THE POINT IN THAT?
REASON'99
CLINTON MUST BE TAUGHT TO SAY WHAT HE MEANS.

purchasing additional pork products."

Lugar also touted the benefits of the other white meat in recent missives to Defense Secretary William Cohen and Veterans Affairs Secretary Togo West Jr. In a letter to President Clinton, Lugar underscored two key points, telling the beleaguered chief executive that "White House leadership and direction can be crucial in these matters," and that "pork is a bargain."



Secretary Glickman has been responsive, pledging to create a "pork crisis" task force, increasing agency purchases of pork, and echoing Lugar's calls for other cabinet-level action. On January 8, Vice President Al Gore announced a $130 million pork package in Iowa.

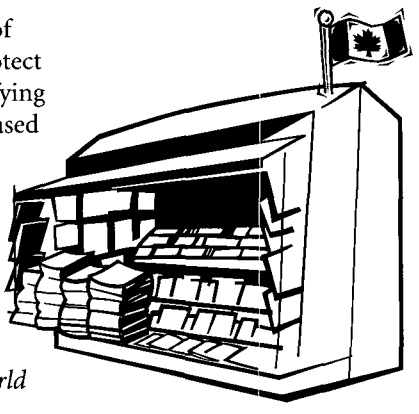
What accounts for Lugar's swinish devotion? The Hoosier is chairman of the Senate Agriculture, Nutrition, and Forestry Committee, which historically has represented the interests of producers. For the pork industry, falling prices for pig—a boon to consumers in the form of cheaper bacon, ribs, and chops—is indeed a crisis. And for politicians like Lugar, Glickman, and Gore, it's a call to action.

Magazine Mounties

By Jason Brooks

"Freeze! Drop that *Sports Illustrated* and put your hands in the air." Canada is in the process of passing a law that will protect Canadians from the terrifying menace of...American-based magazines. Such publications, says the government, threaten "Canadian culture," an expansive notion that's nonetheless incapable of including *People*, *Newsweek*, or *U.S. News & World Report*. The government wants to make it a criminal offense for foreign publications directed at the Canadian market to sell advertising space to Canadians. The fine will be CDN$250,000.

The goal is to avoid "split-runs"—Canadian editions of American magazines with little Canadian editorial content but lots of Canadian ads. Since Canadians already read so many American magazines, Canadian advertisers, if given the choice to advertise in split-runs, would leap at the chance. That would crush the Canadian magazine industry and, by extension, Canadian culture, government officials say. Until last year,



ARTIFACT

Stamp Act

History, that great ironist, is up to its old tricks. The United States Postal Service is issuing a stamp commemorating Ayn Rand, an arch foe of precisely the sort of government-supported monopoly that is now paying her homage. And oh what company she'll keep—1999's other honorees include Daffy Duck, Prostate Cancer, Insects and Spiders, Victorian Love, Xtreme Sports, and James Cagney.

Just as the recent Elvis stamp portrayed the slim, young Elvis, Rand's stamp offers a slim, young, glamorized Ayn, setting her portrait in an art deco context dominated by a stepped architectural skyline. Indeed, if the stamp seems to evoke *The Fountainhead*, it's no accident: The stamp's artist is Nicholas Gaetano, who has done several covers for recent Rand editions.

Give the USPS this much: It esteems Rand's work in a way that the literary establishment does not. "Rand believed that a productive society is the result of individual freedom and effort," reads the official announcement. "Her philosophy influenced all her books and made her a controversial but respected author."

—Nick Gillespie

when the World Trade Organization ruled such protectionist practices unfair, Canada prevented split-runs with huge excise taxes on American periodicals.

The proposed criminal statute is an attempt to get around the WTO ruling. Although Canada is quicker to censor than the United States, the statute may well run afoul of Canada's Constitution, as it violates freedom of speech. Certainly, it will restrict magazine choices for Canadians by making it less profitable for foreign publishers to compete in the Canadian market. Such protectionism may not even benefit Canadian culture overall: An independent study commissioned by the government reported that protectionism has seriously stunted Canada's advertising business and has cost jobs by restricting the magazine advertising space available to Canadian companies.

The U.S. government will challenge the law as an unfair trading practice.

Cheating Teachers

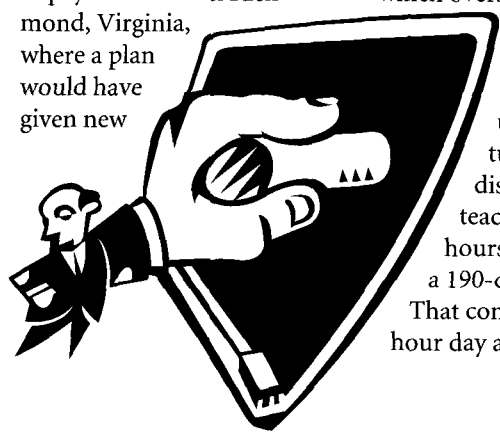
By Michael W. Lynch

Few people doubt that good teachers are in short supply and that upping pay may be one way to boost the quality and quantity of the labor pool. Indeed, in most industries, when there's a shortage of good workers, firms increase wages both to retain the best people they've got and to attract new employees. But public education is not like most industries.

Indeed, it is dedicated to confounding basic economic principles, such as the notions that pay should be linked to performance and that increased competition can improve quality. So it isn't all that surprising that, as education researcher Mike Antonucci notes in *The Education Intelligence Agency Communiqué*, teacher unions in three cities recently opposed raising educators' pay.

In Washington, D.C., where schools are among the worst in the industrialized world, Superintendent Arlene Ackerman wanted to give new teachers an 11 percent boost in pay. That would have made the entry salary $30,000—not bad in a city where similarly educated twentysomethings head to Capitol Hill to work in jobs in the low $20,000s. But the Washington Teachers' Union killed the proposal on the grounds that the raise was unfair to existing teachers, who started for less.

A similar front-end boost in pay was nixed in Richmond, Virginia, where a plan would have given new teachers a $5,000 signing bonus. No good, said union boss Robert Gray, who complained to *The Richmond Times Dispatch* that such a policy "sends a signal that... inexperienced teachers are more valuable than [experienced] teachers."



And then there's San Francisco, where the Edison Charter Academy started paying its teachers $2,800 to $3,600 a year more than their public school counterparts. The United Educators of San Francisco, the union representing most of the city's teachers, filed a grievance with the school district, which oversees the charter school. Beyond the raw dollar amounts, the union was disturbed by another disparity: Edison's teachers put in eight hours a day and work a 190-day school year. That compares to a seven-hour day and 181-day year ▶

BRICKBATS

♦ Santa Ana, California, had plenty of pay telephones. Most gas stations, mini-malls, and convenience stores had at least one. You might think that's a good thing, especially for stranded motorists and people without phone service at home. But the city council decided these phones were an eyesore, so it passed rules making it more difficult and expensive to install them.

♦ In the United States, some want to make it a crime to desecrate the flag. In India, it's against the law to disrespect the colors of the flag. MTV found that out the hard way. Its Indian counterpart started coloring its onscreen logo in the orange, white, and green of India's flag. MTV thought it was identifying the channel as solidly Indian in content and honoring the country's 50th year of independence. The government called it a "serious offense" and threatened legal action. MTV removed the colors.

♦ Members of an O'Fallon, Missouri, high school band have gone to court to challenge their superintendent, who banned them from playing Jefferson Airplane's "White Rabbit" because of the song's "drug message." That perplexed the young band members, who did not perceive any drug message, especially in the instrumental version they planned to play.

Scott Stantis

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WE HAVE DETERMINED THAT THE CHILD IN QUESTION WAS NOT FATHERED BY PRESIDENT CLINTON.
WHAT TESTS DID YOU PERFORM?
WE ASKED THE CHILD A QUESTION AND HE TOLD THE TRUTH.
SOUNDS CONCLUSIVE TO ME...

for San Francisco's other public school teachers.

More pay for more work. Where might that sort of precedent lead?

D.C. United

By Brian Doherty

Lord Acton didn't know from term limits, but he articulated an enduring truth about government with his oft-quoted maxim that "power corrupts, and absolute power corrupts absolutely." A new study from the Cato Institute suggests that this tendency is a function of time.

Since the GOP sells itself as the party of smaller government, author Aaron Steelman reviewed only the voting records of Republicans. He compared newer members of Congress—those who would still be eligible for office if the Contract with America's term limit provisions (three terms in the House, two terms in the Senate) had become law—to their longer-serving elders.

On 27 of the 31 tax, spending, and regulatory votes examined, the junior statesmen were more likely to opt for government restraint. For example, 61 percent of the junior GOP senators voted against hiking the minimum wage, while only 22 percent of senior solons did so. On a House vote to reduce funding for the Overseas Private Investment Corporation, a welfare handout for big corporations doing business abroad, 61 percent of the younger representatives saw fit to cut; only 40 percent of their elders followed suit.

Since writing term limits into the 1994 Contract with America and engineering a lackluster losing vote on the matter shortly after gaining a congressional majority, the Republicans have largely kept mum on the issue. Perhaps that's because, as the party in power, they now see term limits as a nuisance rather than a necessity. Steelman's analysis gives further evidence that for lawmakers, being in Washington eventually means being for Washington.

Where's Pa?

By Charles Paul Freund

Politics in the shadow of the Clinton presidency is turning a good trick: With the sex-war "meltdown" of Washington, political discourse has become as scabrous as it was in the 19th century. Then, mostly false tales of the private lives of public men spewed even from the nation's pulpits, and many newspapers were filled with salacious rumors and outright lies.

The case of Bill Clinton's purported "love child" is entirely typical; you could fill an orphanage with all the rumored presidential illegitimacies. Indeed, many presidents have themselves been rumored to have been the offspring of disreputable couplings. Even *that's* said of Clinton: Conspiracists claim

that he's a son of Winthrop Rockefeller, thus the nephew of David, and thus an heir to the New World Order.

The Clinton love-child story surfaced in the tabloids in 1992, when a Little Rock prostitute claimed to be the mother of the governor's 7-year-old son. This rumor was kept alive in the anti-Clinton underground, where it was believed that mother and son had been hustled off to Australia. But a tabloid's recent effort to prove the story by using published Clinton DNA data was the story's undoing. Even as would-be mom Bobby Ann Williams was giving TV interviews, the results came back negative.

It's rare that such rumors are ever fully squelched. In 1927—the pre-DNA era—Nan Britton proclaimed herself to be the mother of Warren Harding's illegitimate child, and it is still unclear if her claim was true. *The President's Daughter*, Britton's self-published account of a claimed six-year affair with Harding (including trysts in an Oval Office closet), became a best-seller even though leading bookstores wouldn't handle it. It was made into the 1928 film *Children of No Importance*.

Grover Cleveland publicly acknowledged an out-of-wedlock son by Maria Crofts Halpin in response to lurid charges in the appalling 1880 campaign. But neither Cleveland nor Halpin really knew who the boy's father was; Cleveland, who was unmarried when the child was born, may have acted out of honor, protecting the reputation of a late friend and sparing the delicate Victorian feelings of that friend's widow.

Of course, the most persistent such charges have involved Thomas Jefferson and the children of his slave, Sally Hemings. Last year, DNA tests indicated that Jefferson could indeed have been the father of Eston Hemings. But critics have countered that Thomas's brother Randolph might also have been the father, and the matter is unlikely ever to be settled completely.

In the meantime, Clinton is thought by some to be under even this bed: Questioning the report's timing, conspiracists have dismissed it as intentionally exculpatory. Thus would the 19th century exonerate the 20th. But both centuries' presidential children have usually turned out to be changelings, and their accusatory cries so much political noise. ▶

SOUNDBITE

Exorcising Demon Rum

In *Battling Demon Rum: The Struggle for a Dry America, 1800–1933* (Ivan R. Dee), Thomas R. Pegram has written a concise, accessible history of liquor prohibition in the United States. He provocatively argues that "the *image* of prohibition remains a powerful, if often unstated, political presence. Prohibition stands as...a reminder of governmental limitations and policy failures. To wary politicians, prohibition has become a shorthand reference for the pitfalls of divisive moral legislation which should be avoided at all costs. On the other hand, opponents of narcotics laws and strict governmental regulation of tobacco, to use two recent examples, attack these government controls as 'prohibition,' using that loaded term to summon up memories of foolish, unenforceable, vindictive laws that sparked massive popular resistance and a loss of faith in government itself."

Pegram, an associate professor of history at Baltimore's Loyola College, spoke with Senior Editor Nick Gillespie by phone in January.

Q: Why did prohibition happen?
A: It happened twice. Both times, there was a confluence of factors. The democratic makeup of the United States allows groups to turn their behavioral viewpoints into legislation. In the 1850s, when the first state-level laws were passed, there was a breakdown of the two-party system. In the period of the national prohibition in the early 20th century, it was the slight decline in power of political parties during the Progressive Era and the patriotic lockstep associated with the American entry into World War I.
Q: Why was the 18th Amendment repealed?
A: It hadn't worked on its own terms. Institutionally, it wasn't adequately supported—there was a great deal of evasion of the law. Among those who believed in the rule of law, there was a real fear that the flouting of any law would undermine all laws. The crisis of the Great Depression also helped. And there was an organized anti-Prohibition movement that tapped into growing public dissatisfaction. Still, many opponents assumed it would never be repealed.
Q: What are the lessons to learn from prohibition?
A: One is that interest groups can influence laws, but they can't actually govern. Another is that divisive social issues—precisely because they *are* divisive—make it very hard for one side to triumph fully over the other.
Q: How does your analysis apply to current wars on drugs and tobacco?
A: Drugs have been illegal for so long that there's still a large cultural adherence to the notion that these are "illicit" substances. So there's little public support for repeal of laws—we're going to continue having drug prohibition. With tobacco and alcohol, however, there are legal producers and lawful consumers. The history of prohibition has taken the possibility of a total ban off the table, even for cigarettes. Instead, you'll see more of what we're seeing now: a public health offensive combined with increased taxes and manufacturer liability.

BRICKBATS

◆ Israel's largest insurer has filed suit against American and Israeli tobacco companies, seeking compensation for the costs of treating smoking-related illnesses. In addition to $2 billion in monetary damages, the suit seeks to force tobacco firms to remove the harmful substances from cigarettes.

◆ The family that owns the Sunken Gardens tourist attraction in Florida has been trying to sell it for 10 years. They've been hampered, in part, by the fact that the site has been declared a historic monument, thus imposing restrictions on changes. For instance, one developer wanted to buy the property to build townhouses, a change that would not have been permitted. Now the owners have found a buyer who will keep the property in its historic shape: A nudist group wants to turn Sunken Gardens into a nudist resort. "They want a historic use? This one goes back to Adam and Eve," said an attorney for the current owners.

◆ The city of Houston had to throw out 2,000 booklets about the mayor's youth programs because they were riddled with typos, misspelled words, fragmentary sentences, and grammatical errors. Among them: teachers are called "teches," and the library is called the "libray." The booklet, which even contained a typo in the mayor's name on the cover, was written by the city's $67,000-a-year director of youth services.

—Charles Oliver

Henry Payne

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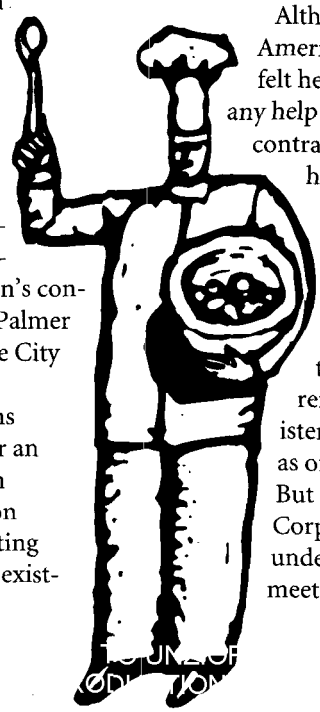
Invisible Man

By Michael W. Lynch

If an employer refuses to hire or to contract with someone because he's black, it's called discrimination. Unless, of course, it happens because of government regulations ostensibly designed to protect minorities. Then it's called affirmative action.

Confused? Consider the case of John Goode, the owner of Mr. Bones BBQ in Austin, Texas. From 1989 through 1996, through subcontracts with concession vendors, Goode's Mr. Bones served patrons of special events at several city-owned venues, including Austin's convention center, the Palmer Auditorium, and the City Coliseum.



Goode's problems started in 1996, after an official investigation found discrimination in the city's contracting practices despite an existing affirmative action program. In response, Austin redoubled efforts to boost contracts with minority-and woman-owned businesses, setting quotas ranging from 10percent to 32perent for these firms. To spur cooperation in the business community, the city also instituted tough penalties for companies that didn't measure up to the new standards, including a five-year bar from city contracts and monetary fines.

Although African American, Goode felt he didn't need any help securing contracts. After all, he already had concession deals through Fine Host Corporation. So he refused to register with the city as officially black. But Fine Host Corporation was under pressure to meet the city's quota. In an August 2, 1996, letter ending their business arrangement, the company suggested that it was less interested in the quality of Goode's barbecue and more interested in the color of his skin. "Due to the lack of proof [of your minority status], we cannot continue this business relationship," wrote Fine Host management. "Our commitment to the City of Austin is to do our best to maintain a 25 percent concession with certified minority/women owned business enterprises."

Goode, who subsequently lost his business and house, filed suit against both the City of Austin and Fine Host for wrongful termination. In December 1998, a federal district judge dismissed the case on summary judgment, claiming Goode had no standing to sue, since the affirmative action program is designed to benefit him. The judge even assessed Goode an extra-special benefit: $6,850 in court costs incurred by the city and Fine Host.

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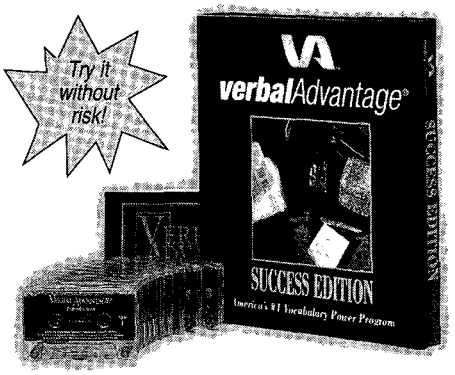

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Road Trip

In which our man in Washington lights out for the territories to explore culture and find the people behind the polls

By Michael W. Lynch

Date: Wed, December 30, 1998 8:26:52 PM
From: mlynch@reasondc.org
Subj: Cultural Studies

REASON infiltrated the leftist preserve of literary studies on Monday, when Senior Editors Chuck Freund and Nick Gillespie and Contributing Editor Deirdre McCloskey brought the good news of consumer culture and free minds and free markets to the Modern Language Association's annual meeting in San Francisco.

My lovely wife, an aspiring English professor herself, is attending the convention in hopes of securing employment. Being a supportive husband, I decided to spend a week in San Francisco with her. So I was on hand to cover the event.

The panel, titled "The Economics of Culture: Non-Marxist Materialist Approaches to Literary and Cultural Studies" was scheduled for 1:45 p.m., which is exactly when I managed to arrive. Opening the door, I thought at first that I must be in the wrong place. The room was packed; at a planning lunch just two hours prior, Messrs. Freund and Gillespie had speculated that there wouldn't be much of a crowd.

As I wiggled into a back row seat and pulled out my tape recorder and pad, Nick appeared at the podium to introduce the panel. This is when they'll leave, I thought. They probably have this panel confused with the cash bar sponsored by the MLA's Marxist Literary Group. But as Nick introduced the topic, everyone stayed put.

Ms. McCloskey was the first up. The microphone wasn't working, which immediately presented a problem. To solve it, Deirdre held forth from the center of the room. "I've been many things in my life," McCloskey opened in a hoarse and hushed tone, which had everyone sitting on the edge of their seats. "A man, for example, and a Marxist."

Slam dunk lead, in a room filled with Marxist symps who no doubt admire anyone who would make the ultimate demographic transition. She would later provoke laughter by asking, "Do I look like a conservative?" A question that answers itself.

McCloskey's point was simple, and seemingly well taken. "Despite what you have heard in these halls," she said at one point, "capitalism and markets are emancipatory, not enslaving." This rather bold statement not only induced no boos, groans, or hisses; it prompted no exits either. As McCloskey finished, there were five people sitting on the floor, as by now the seats were all taken. And even though the room was cramped, a bit hot, and plenty stuffy, only two people left when McCloskey was done. Perhaps, I thought to myself, we're on to something with, in Chuck's coinage, this "New Materialist Project."

Chuck was up next, no doubt feeling pressure to top his gut-busting performance at Reason Weekend 1998 in Texas. He may have.

Chuck led with, "Let's go shopping with the Virgin Mary," as a famous Renaissance picture—made more famous as last June's REASON cover art—appeared on a projection screen just behind his head. He remarked that although today we celebrate such art as high expression grounded in deep faith, it is easier to find the peacock in the picture than the Holy Ghost. [See "Buying Into Culture," June 1998.] Chuck wove an impressive list of scholars, painters, and periods together to make the point that for art, cultural production, and what Chuck might call "individuation," the free market is an enabler, not a shackler.

Academic audiences are a bit stiff, perhaps because, in the politically correct world they inhabit, the funnier something actually is, the less freedom they have to laugh at it. After a while, these folks just forget how to laugh, and their faces freeze up in a pious pucker that gives testimony to their recognition of the constant injustices of the world.

Chuck, however, made these people laugh. And so, come to think of it, did Deirdre and Nick. While Chuck reached as far back as the Renaissance to make his point, Nick, in his words, "limned" the past 30 years of cultural explosion. From the moment he appeared at the podium proffering words such as *limned*, it was clear that Nick was in his element. Comfortable and confident, he employed his deadpan wit to show the audience the profusion of cultural production and outlets for such production due to the market.

He quoted not only the literary elite but the libertarian elite as well, invoking Nobel laureate James Buchanan not once but twice. All the while, people kept coming in the door and filling up the side aisle, as if word that there was actually a panel where people weren't reading mind-numbing papers was spreading.

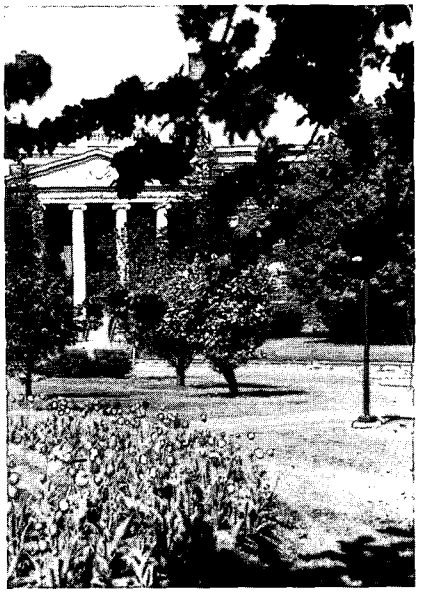
At approximately 2:50 p.m., Nick finished up and opened the floor to questions, of which there was only one—a Marxist inquiry about the use value vs. the exchange value of art and how this had something to do with something else.

But the lack of official questions shouldn't be confused with a lack of interest. Most of the audience members left

HENRY PAYNE

Objectivism: Theory and Practice

The Tenth Annual Summer Seminar of the Institute for Objectivist Studies University of Vermont in Burlington July 3–10, 1999



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- ***David Mayer,*** *"Antitrust vs. Capitalism?"*
- ***Robert Poole,*** *"Flying the Frenzied Skies"*
- ***Clint Bolick,*** *"Equality: Recapturing an Individualist Principle"*
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- ***Susan McCloskey,*** *"Why Johnny Can't, Like, Write"*

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with a look of shell shock on their faces, as if a truth bomb had just exploded before their eyes. They are, no doubt, rethinking their American Express Card leftism, converting to American Express Card moderates, as they shop guilt-free for the first time in the plenitude of San Francisco's Union Square.

Others rushed the panel for individual attention. At one point, Chuck had a line three deep seeking his wise counsel. I could barely see Nick, surrounded as he was by admirers hungry for more wisdom. And it was more than a few minutes before McCloskey was free to pick up her pooch-toting pouch and come over and talk with your humble correspondent. Inspired, Nick and Chuck headed into S.F.'s Tenderloin for a drink, as the next panel finally seized control of the room.

Date: Thurs, January 7, 1999
6:06:19 PM
From: mlynch@reasondc.org
Subj: The Greyhound Diary

I had such a great time in California that I didn't want to return to Washington. I forgot how easy it is to ignore the pettiness of our national politics in the Golden State. I never once hit the *Washington Post* Web site, nor did I ever feel any the worse for not doing so. The *USA Today* delivered at the Hilton sufficed to keep me conversant, not that politics came up much.

The thought of returning to a town filled with the bickering of the impeachment process—who was going to testify, if anyone, whether there would be a pre-vote vote, and so on—filled me with unhappiness. So I came up with a plan. Why not delay the trip back by trading in my plane ticket for a bus ticket? My uncle had recently done so and claimed to enjoy the trip. Along the way, I could interview people about impeachment, the government, etc. How are Washingtonians different from those who travel by bus? What do bus riders think of Washington? Virginia gave it the go-ahead.

Since I already had a plane ticket that took me through Dallas, I decided to cut out halfway and take the bus in from Dallas. It couldn't have worked out better. When traveling coast to coast, I try to book American through Dallas for one simple reason: Hundreds of other people do so as well. The result is overbooked flights. I volunteer to get off those flights, get rebooked on a later flight (often in first class), and get handed a $300 voucher for use at a later date on American Airlines. So I was pleased, but not surprised, when American paid me 300 bucks not to get on its airplane Sunday. "Book me any time you like," I told the desk attendant, "I'm taking the bus."

Voucher in hand, I headed for a cab to take me to the Dallas Greyhound station, where a bus heading to D.C. was scheduled to leave in two hours. I got to work right away, asking the taxicab attendant, Alexander Moreno, what he thought of the president's predicament. "Degrading to the office," Moreno replied in an accented tongue and saddened voice that echoed the sentiments of Washington's elite. On November 2, the day before the election, *The Washington Post*'s Sally Quinn wrote an article based on more than 100 interviews with the cream of Washington's political establishment. Washington's elite "feel Washington has been brought into disrepute by the actions of the President," Quinn reported. "He came in here and trashed the place," *Washington Post* writer David Broder told Quinn. "And it's not his place."

What do bus riders think of Washington? During a 35-hour Greyhound trip from Dallas to D.C., I found out. "My opinion is simply that it sucks," said a Texas A&M student. "They got a whole lot of pots calling the kettle black," said another rider.

It certainly isn't, judging from the sections of Hope, Hot Springs, and Little Rock I saw from the bus window. The White House, after all, has a foundation, wasn't manufactured, and doesn't have any cars rusting in front.

Like many bus stations, Dallas' isn't in the best part of town. This neighborhood can be quite dangerous. JFK was shot just around the corner. I bought my ticket—the first time I can remember that I've had to show ID to use a credit card—and had two hours before boarding. I went to put my bag in a locker and head out into the cold in search of the book depository. Unfortunately, the only empty lockers were broken (three youths in gangster chic beat me to the last working one), so I was forced to tote both my bags down the street and through the museum. I did the JFK museum, hit a McDonald's, and was back with a half-hour to spare.

While waiting, I decided to get some opinions. Behind me was a woman with a tattoo on her left breast, something I have yet to see on the business-suit–filled Metro ride between Arlington, Virginia, and my downtown office. Knowing I'd probably be trying to read her tattoo's cursive letters, interrupting my note taking if not offending her (although people who tattoo words on their tits and then expose the prose to the public can't complain about avid readers), I approached two men I took to be in their 20s.

"My opinion is simply that everything sucks," said Derek Pierce, a counseling student at Texas A&M who was returning from a holiday in San Antonio. (This is a thought that may have crossed Trent Lott's mind in recent weeks.)

The Republicans have it in for Clinton because he's like other "minorities or underachievers," offered Kenneth Snow, a fighter who had just finished training in Houston and was on his way to West Virginia to pick up his car and drive back to Las Vegas, which he now calls home. Snow, of course, was echoing the Nobel laureate Toni Morrison, who wrote something similar in some tony publication, although I am not accusing Snow of stealing the idea from her.

Snow then proceeded to articulate the White House spin to the letter. "They've been after him since the beginning," he said. "It's a private thing."

I rode the bus for 35 hours, traveling through Texas, Hope, Little Rock, Memphis, Nashville, Knoxville, Richmond, and a zillion small towns. It's an experience that, well, I'm glad I experienced once. It's nice, for example, to see a mother clutch-

ing her baby close to her chest, with a lit cigarette dangling over the baby's head. And if such recklessness isn't heartwarming enough, you'll be happy to know that this smoke-filled scene occurred indoors. A lot of smoking occurred indoors, in fact, as outside of California it appears to still be legal. Not on the bus, because federal law prohibits that. But smoke breaks were taken at every possible chance, as most of the passengers and drivers were smokers.

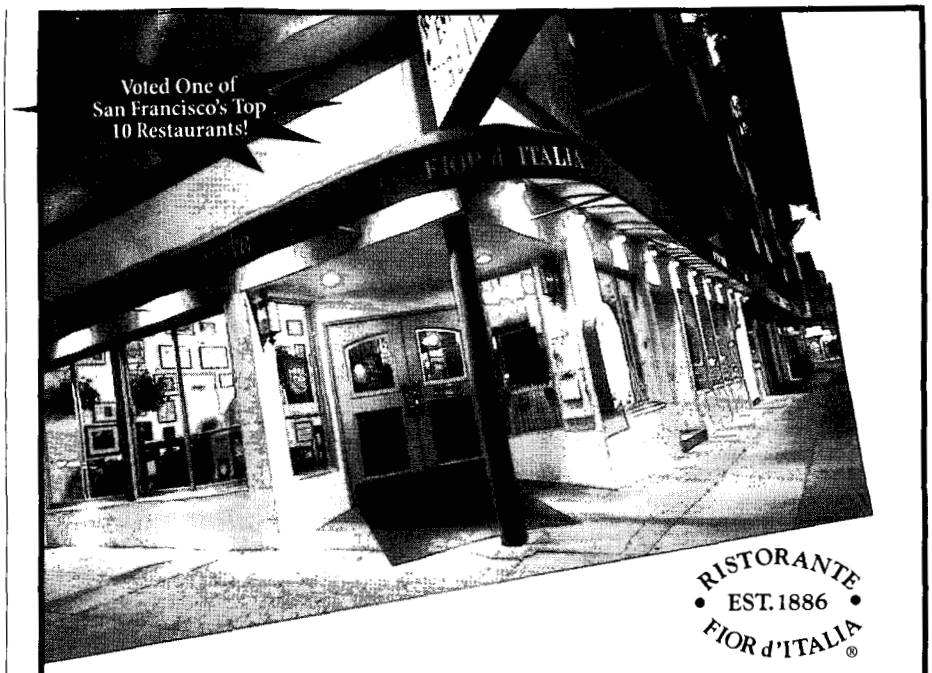
"It's good to get a driver who smokes," Amber Goldston, a 22-year-old air conditioner assembler from Clarksville, Tennessee, told me, as we rolled on into the Texas night. Amber doesn't smoke—a good thing too, she noted, since at $3 a pack she'd have to quit anyway. But as a veteran bus rider, she likes drivers who smoke because they stop at regular intervals, letting passengers off at convenience stores, where even nonsmokers can grab a Coke or a healthy snack, like a bag of Fritos.

Amber and I shared a seat through Texas, engaging in enjoyable conversation. An Army brat, she has a year of college under her belt and would like to return for a degree in computer science but can't afford the tuition. She plans to look into the Army as an education ticket. She's bright and certainly recognizes Clinton's crimes: "He lied under oath, that's the main thing." But she is willing to forgive: "Everyone after him probably lied as well."

Lying in Washington? That's just the sort of impression that worries Sally Quinn's pals. "Washingtonians can't abide it that the rest of the country might think everyone here cheats and lies and abuses his subordinates in the way the President has," says Quinn.

But Amber was pretty typical. During my 35 hours, I interviewed just about two dozen people from disparate professions and trades—a newly minted truck driver, a retired railroad man, an ex-speed freak, U.S. Marines, an Army man, a retired schoolteacher, a factory worker, students, carnival hands, a just-released convict, and more. With two exceptions—a Marine who felt that the commander-in-chief shouldn't get away with adultery and a conservative Nashville-based songwriter—every single person sided with Clinton.

It didn't matter if I talked to them at 3 a.m. in a crowded, loud, and smelly Memphis bus station or at 8 a.m. in Nashville.



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It didn't matter if they were male or female, black or white. Clinton has the Greyhound vote wrapped up—which is another way of saying that the Greyhound sentiment is, judging from the polls, more representative of the American sentiment than those who are well paid to shape it in Washington.

These folks don't just like him—many of them love and even admire the man. "To me, Clinton is like The Man. He's The Man," enthused Kenneth the fighter. "I ain't never seen a president trying to bring such unity."

It's always good to see the country from the ground. On the way west, the Lovely Wife and I had gotten stuck in Dallas due to the ice storm. I grumbled for two days about how this illustrated 1) why it is called fly-over country and 2) why fly-over country ought to be flown over. I was wrong. It should be driven through. Preferably on a bus.

The people are great. Sure, flying first class from Dallas into Reagan I have been fortunate enough to sit next to Jim Woodall, the man who runs "Concerned Women for America." He reflected well the conservative consternation with Clinton, relaying stories about how debauched the White House has become under Clinton as we ordered our free drinks from a stewardess with whom Woodall was on a first-name basis from frequent flights. On the bus, we had to get our own drinks from the 7-Eleven, and no one cared about the depths to which Clinton has brought the White House—mostly because they don't care much about the White House or Washington.

Take George Ferris, the retired railroad man I met. Traveling from his home in Pratt, Kansas, to North Carolina to see his "sweetheart," he told me railroad stories. Like Bob Dole, who likes talk about himself in the third person, George referred to himself as "Bear" on a couple of occasions, as in: "My buddy said, 'Bear, he was just scared,' " referring to an incident when a drunk driver was strangling Bear and yelling, "Keep your hands off my wife." At the time, Bear was trying to pull the guy's pregnant wife from the car Bear's train had just smashed. (Bear experienced 57 accidents during his 29 years on the Midwest's rails. Don't, I repeat, don't try to outrun a train. It takes them 1.5 miles to stop, with all systems locked up.)

Bear's view on Clinton is close to that of James Carville and Larry Flynt. "I think they should investigate the whole damn bunch of 'em," he harrumphed. "The House, the Senate, all those boys who want to hang Clinton. Let's see how much rope they can take."

Bus riding is a great way not only to meet interesting people but to bone up on the ins and outs of the American economy—to fill in the details that think-tank wonks lose in their aggregates. For instance, I've always wanted to know more about carnies, the hands who work the summer fairs. So I was pleased to run into Mike Burns, a self-described "carnival man" who sported a blue stocking hat and a full white goatee that had turned yellow around the mouth, probably from his enthusiasm for cigarettes.

"I don't think the president should have been caught playing his 'monica," he said with a smile, glossing over the fact that "Hands-Off" Bill's story is that Monica was the only musician blowing anything. But I didn't want to get hung up on the particulars of Zippergate. I wanted to know about the carnival trade from a man who's spent 20 years working it.

These folks don't just like Clinton—many of them love and even admire the fellow. "To me, Clinton is like The Man. He's The Man," enthused Kenneth, a rider. "I ain't never seen a president trying to bring such unity."

What does it take to get a job? I asked. "Show up," he advised. "They don't ask any questions and don't take any paper." Just stay away from the "pig iron," which is carny slang for the rides. The hands working the rides make only $250 for a seven-day, 15-hour-a-day week. The rides are dangerous and, after the party is over in one town, the pig iron attendants have to break down and deliver the rides to the next stop.

Burns is a game man, making his pay on a cut of the day's take. Why would anyone choose pig iron over the games, I asked? They get an ego boost out of it, letting girls ride for free, he explained, adding, "They get a lot of dates."

Traveling by bus, I confirmed another long-held economic hunch: No one should spend seven years in graduate school mastering the refinements of the humanities, at least if they want to eat. They should spend one month learning to drive a truck.

Rick Meyers, a pony-tailed man I would put in his 50s, sat in front of me on the journey's first leg. He had just finished a month of truck driver training and was taking the bus to Texarkana to pick up a rig for his first run. He had three job offers before he even had a license and expects to make between $700 and $1,000 a week driving long haul for Deboer Inc., which pays 24 cents a mile. Of course, he'll be home only two days every two weeks. But after 27 years of marriage, he isn't too concerned about that. He said something about looking forward to the loneliness.

As I listened to Meyers tell tales of already-employed drivers getting bonuses of up to $2,500 to switch companies, I thought of the Modern Language Association conference I had just been privy to in San Francisco. After years of intense schooling, only one in three English Ph.D.s can expect a tenure-track position immediately after they take their degree. That is pretty miserable in an economy where truckers are getting four-figure signing bonuses. Of course, truckers have some skills. How else would those university bookstores get their books?

Rick's attitude toward the scandal seems quite typical outside of the Beltway. "It's a private thing and ought to stay a private thing," he said, later adding, "Clinton's no better or no worse than any other."

This, of course, is exactly the sentiment that has Sally Quinn's pals so upset. Says former Clinton adviser Bill Galston, "To concede that this is normal and that everybody does it is to undermine a lifetime commitment to honorable public service." ABC's Cokie Roberts adds, "It's a community of good people involved in a worthwhile pursuit. We think being a worthwhile public servant or journalist matters."

Clinton, you see, stained not only

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Monica's dress but Washington's pretensions that being a bureaucrat or well-paid journalist is noble "public service," while spending a lifetime on the railroad, in a truck, or bouncing from carnival to carnival is a selfish pursuit fueled by avarice. On an icy freeway, however, being a skilled truck driver may be a bit more important, a thought Amber kept expressing, worried that somehow Rick's month of training wasn't quite enough.

Washington is right to worry. Rick, who "keeps his head down and follows the rules," says, "As far as the government is concerned, they can shove it up their ass." Keep on trucking, brother.

And then there are just characters you wouldn't want to go through life without meeting. D.S. from Louisville, Kentucky, is one such person. D.S. is an older black woman, with crossed eyes and a brilliant white afro that, from a distance, resembles a late-stage dandelion. As we talked, I didn't quite know where to focus, or even if she could see, her eyes were so at odds with each other. She spoke furtively and wouldn't give her full name, offering such nuggets as: "He wasn't the first and he won't be the last. They should not have gotten Nixon either. It was Monica's fault if you ask me."

Later, as I passed into the Texarkana bus station, D.S. stood outside smoking an unfiltered cigarette. She told me she had something else for me but was worried that I was like Linda Tripp and taping her. I assured her I wasn't taping and, besides, she wouldn't give me her name. Still, I never got her last insight.

D.S.'s complex politics—likes both Nixon and Clinton—were reflected in others as well. In Washington, you're either on Team A or Team B. On the bus, people pick and choose. The tobacco-chewing Shane Makome, a recent Army recruit from Nashville, comes to mind. "To hell with Republicans," he said, after telling me I wouldn't want to hear what he had to say. "President Clinton has done more for this country than President Reagan or Bush ever did."

It's not that Makome agrees with everything Clinton does. "He's too liberal," says Makome. But he's willing to put Bill's problems in context. "Big deal, he made a mistake," he said. "We all do. The Kennedys were the world's worst. A bunch of bastards."

Can you see why I enjoyed this trip? I heard such disparaging remarks about the Kennedys more than once. And they certainly seem appropriate. I wasn't around at the time, but didn't big boy Ted drown a woman while drunk one night, his car careening off some bridge into some body of water? I guess *drown* would be too strong a verb. His actions, if I recall from my American politics classes that never addressed them, were more Clintonian. Kennedy, I believe, ran for cover, saving his own butt, while the woman, who was probably from a less distinguished and therefore far less important family, just went away one gasp of air at a time until there was none left to capture.

Last night I was on a Boston-based talk radio show where caller after caller expressed outrage that the American people, including those I talked to on the bus, were not sufficiently upset with Clinton and even approved of his job. When I mentioned Pvt. Makome's thoughts on Kennedy, however, they had no response.

As we approached Johnson City, Tennessee, Hazel Rice, a retired high school science teacher returning from a bowl game, wanted in on the action. "Are you doing a survey or something?" she asked. I pulled out the pad and headed down the aisle.

Washington is right to worry. Rick, a truck driver who "keeps his head down and follows the rules," says, "As far as the government is concerned, they can shove it up their ass." Keep on trucking, brother.

"They got a whole lot of pots calling the kettle black," she said. A great cliché, I responded, which simply egged her on. "A lot of people who live in glass houses are throwing stones," she continued, as an "oh yes" erupted from Ann, who wouldn't divulge her last name and who had earlier told me, "It's a farce from beginning to end. A waste of my money. They have been after him from the beginning. So he's a liar." (Ann, with whom I shared my entire ride, is an interesting woman. She loves Clinton and hates Lott, Armey, Gingrich, DeLay, Hyde, etc. Yet when I showed her my January Capital Letters column, she exclaimed, "I like Armstrong Williams," the conservative talk show host.)

As enjoyable as the trip was, I felt relief when it ended at 3:30 a.m. in icy Washington. Bus seats are like coach airplane seats without the padding and tray table. My back ached and, on the last leg, a two-hour express bus from Richmond, two drunken men kept the entire bus awake with their loud talk. At one point, they got to discussing Monica, which was helpful. Both turned out to be enthusiastic supporters of the president. But they spent a good deal of time lobbing racist jabs at the Asian driver followed by loud laughs. "North, we must go North, like North Korea," one would say in a faux accent, the other emitting a deep and hoarse belly laugh. I staggered off the bus, grabbed a cab, and was home in bed by 4 a.m.

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Sex & Sensibility

JOSE ORTEGA

By Cathy Young

In 1997, a study claiming to explain why boys will be boys and girls will be girls sparked a revealing outcry. British scientists had been studying girls with Turner's Syndrome; these girls have one X chromosome instead of two, and they tend to be insensitive and socially inept. As *Time* put it, "They act, in other words, a lot like boys."

The first victim of the gender wars is common sense.

Most daughters inherit an X chromosome from each parent. The study found that the Turner's Syndrome girls who got their single X from their mothers—as all boys do—were far more anti-social than girls with a paternal X. The researchers speculated that a social adjustment gene linked to the X chromosome is activated only if the X comes from Dad and thus is active only in girls.

"Experts Say Men Are Programmed to Behave Badly; 'Social Gene' Makes Lasses Nicer Than Lads," cried the headline in a London tabloid. "Preposterous," scoffed feminist writer Susie Orbach in the more highbrow, left-leaning British daily *The Guardian*. "Gender roles are culturally prescribed—they've nothing to do with genetics."

But were either of these sweeping statements grounded in reality? On a standardized index of anti-social behavior reported by parents, the average score for Turner's girls with a maternal X was nine out of 24. But if the "social gene" theory is right, Turner's girls who get their single X from their fathers should have been as socially skilled as normal girls. Yet boys and Turner's girls with a paternal X both averaged about 4 on the anti-social index. Normal girls had an average score of 2. There was also a good deal of overlap among the scores of normal children: Three out of 10 boys were as nice as five out of 10 girls. That's a difference, to be sure, and quite possibly a genetic one—but hardly one that indicates men are from Mars and women from Venus.

Many feminists absolutely refuse to allow that some of the gender-based inequalities they deplore may be due in part to innate differences. Many conservatives just as dogmatically invoke sex differences, often distorted or magnified beyond recognition, to condemn any departures from traditional roles.

The Two Poles of Sex

The "social gene" brouhaha is all too typical of how we now talk about sex differences: Biology is either everything or nothing; men and women are identical or polar opposites. Many feminists absolutely refuse to allow that some of the gender-based inequalities they deplore may be due in part to innate differences. Many conservatives just as dogmatically invoke sex differences, often distorted or magnified beyond recognition, to condemn any departures from traditional roles. Neither side has much patience for the complexities of real life or for the variety of real people.

For example, in an August 1995 *New York Times* op-ed piece, conservative writer Danielle Crittenden argued that men's "genetic wiring" makes them immune to "the mental strain of walking out the door" that working mothers suffer. Irate readers dismissed this as absurd and asserted that any such feelings arise from "cultural conditioning."

It is hardly absurd to think that the parent who gives birth may have a biological predisposition to be more attached to the baby. On the other hand, a biological predisposition is not a universal imperative. Men thrust into a "Mr. Mom" role because they are out of work when the baby arrives often feel heartbroken when *they* have to walk out the door.

These extremes—polarity vs. sameness—are entrenched in mainstream culture. The notion that without sexist discrimination, half of all chief executive officers, engineers, and firefighters would be female is, paradoxically, matched by the equally pervasive notion that women and men are worlds apart. A May 1994 *Newsweek* story on gender in cyberspace says that women want computers to "meet people's needs," while men want to explore and conquer. In April 1998, *The New Yorker* ran two articles about how women will remake government and business in a collaborative, nurturing, consensus-oriented mold. A *U.S. News & World Report* story on women architects in October 1996 states that, unlike men, they place human needs above the ego and "collaboration" above "individual brilliance."

The evidence for such claims is usually underwhelming. If 58 percent of women and 46 percent of men tend to favor an activist government, that mutates in the minds of analysts into "fundamental differences" on issues and values—even if, in the same poll, 44 percent of men and 49 percent of women agree that "government should do more to help needy Americans even if it means going deeper into debt."

It is sometimes suggested that to deny differences between the sexes is a willful blindness to reality. But all those grandiose pronouncements about men and women often seem no less at odds with how actual human beings behave.

When the women-only sailing crew of *America*^{3} raced for the 1995 America's Cup, the media readily picked up team sponsor Bill Koch's favorite theme: Women (unlike men) don't have a problem subordinating their egos to the team. Yet an earlier all-female team, the U.S. Women's Challenge

in the 1993 Whitbread race, was plagued by rivalries that prompted ousted skipper Nance Frank to lament, "Basically, there's no difference between men and women."

When John Gray, author of *Men Are From Mars, Women Are From Venus,* took his act to Broadway, a celebrity member of his on-stage panel, the supermodel Frédérique, wouldn't play along, declaring, "I relate a lot more to the Martian side." Gray scrambled for a face-saving answer that stood his basic conceit on its head, saying that women are "both Martian and Venusian." Yes, and so are men.

What's the Difference?

In recent years, even feminism has embraced gender differences and "female values" such as cooperation, nurturance, and pacifism. Although antipathy to "male" individualism and competition was part of the women's movement in the 1970s, "difference feminism" became ascendant after the publication of the 1982 book, *In a Different Voice,* by Harvard psychologist Carol Gilligan. Gilligan contrasted women's "ethic of care," based on human needs and relationships, with "male" moral reasoning based on rights, justice, and abstract principles.

"Difference feminists" usually skirt the question of where the difference originates, though Gilligan dances on the edge of arguing that childbearing gives women "easier access...to the fact of human connection." This evasiveness has earned them some ridicule: Journalist Robert Wright pokes fun at Deborah Tannen, author of the 1990 best-seller *You Just Don't Understand: Men and Women in Conversation,* for arguing that boys "learn" to jockey for status in their more hierarchical networks, without explaining "why the boys' groups are always more hierarchical in the first place." (That *always,* as we shall see, is quite an overstatement.)

Wright belongs to a school of thought known as evolutionary psychology (represented by his 1994 book *The Moral Animal* and by such recent works as Matt Ridley's *The Red Queen* and Steven Pinker's *How the Mind Works*). This school holds that *la différence* is a product of reproductive strategies that evolved to ensure genetic survival. The male, who can increase his progeny by having many mates, is "programmed" to wander and to seek dominance. The female, for whom parenthood is time-consuming, saves her favors for males who have good genes or who are willing and able to "invest" in her and her young. He looks for youth and attractiveness in a mate (signs of fertility); she looks for status and resources. Even if these patterns aren't relevant in an industrial society, they are "hard-wired" into our brains by millennia of evolution.

Our genetic heritage may shed light on many things about men and women. But we should heed philosopher Thomas Nagel's warning against "the ludicrous overuse of evolutionary biology to explain everything about life, including everything about the human mind."

The political implications of this theory can cut both ways. Wright and Ridley invoke it to support affirmative action: Since men's advancement is propelled by their greater lust for power, often unrelated to merit, women must be favored "not to redress prejudice but to redress human nature." Others, such as Wayne State University law professor Kingsley Browne, argue that in the light of the new Darwinian science, male dominance in the public sphere is natural. And some evolutionary psychologists take issue with the view of women as less power-hungry. Primatologist Sarah Blaffer Hrdy points out that female apes compete for status quite aggressively, if less flamboyantly than males.

Our genetic heritage may shed light on many things about men and women. But we should heed philosopher Thomas Nagel's warning against "the ludicrous overuse of evolutionary biology to explain everything about life, including everything about the human mind," particularly since scientific knowledge of how evolution shapes the human mind is not just incomplete but highly speculative.

There is also much that science has yet to learn about hormones and brain organization, two other hot areas of research on sex differences. For instance, findings of "masculinized" behavior such as increased play with "boyish" toys in girls exposed to high prenatal levels of male hormones (androgens) are ambiguous: Androgenized girls don't show elevated levels of physical aggression or rough-and-tumble play. In one study, contrary to the researchers' expectations, girls with twin brothers, who have some exposure to androgens in the womb, exhibited no unusually tomboyish behavior, while girls with an older brother did.

Nor does magnetic-imagery brain research lend itself to simple conclusions. In a much-publicized Yale study in which men and women used different parts of the brain when pick-

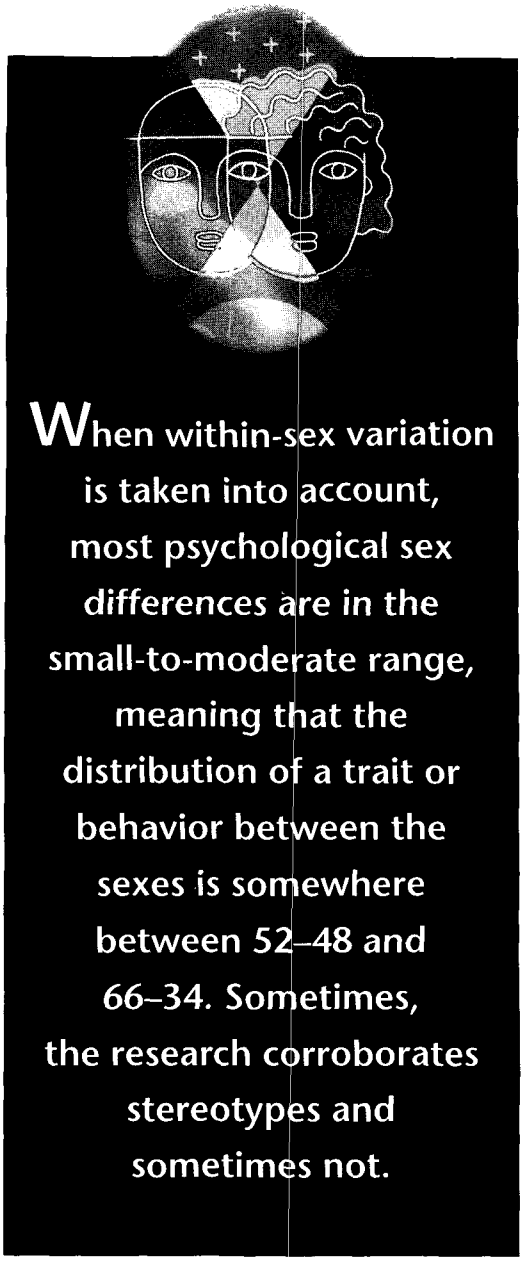
ing rhyming word pairs, more than 40 percent of the women—eight out of 19—thought like a man, so to speak, but no men showed a female pattern. Could this mean that women are less rigidly sex-typed? Maybe. But while another brain scan study from the University of Pennsylvania found some differences in brain metabolism, a third of the males and only four of the 26 females had "cross-sex" brain patterns.

Unisex feminism certainly has its inanities and its zealotry, aptly dubbed "biodenial" by Daphne Patai and Noretta Koertge in their 1994 book *Professing Feminism.* Feminist biologist Anne Fausto-Sterling argues that the very idea of two sexes is a cultural construct, since babies with genital or chromosomal abnormalities are neither male nor female. Some scientists report pressure to stop or bowdlerize sex difference research. In John Stossel's 1995 ABC special, *Boys and Girls Are Different,* Bella Abzug and Gloria Steinem dismissed such research as "poppycock" and "anti-American crazy thinking."

Yet the fascination with *la différence* can make truth a casualty too. Take an oft-cited study in which 1-year-olds were separated from their mothers by a barrier. The results were summed up by Stossel as, "Most boys try to knock the barrier down; most girls just stand there and cry for help"—a depressing image of feminine passivity.

Yet Stossel also acknowledged that when his crew tried to tape such an experiment they saw only the exceptions—boys crying, girls struggling to get out. In the original 1969 study, the girls cried almost twice as long as the boys, and boys were more likely to wander to the ends of the barrier (where it was latched). That was taken to mean that they were trying to solve their predicament. But in a more detailed analysis of these data published 10 years later, it turned out that the girls pushed at the barrier as much as the boys did and tried to open the latches *more* often; the boys who moved to the end of the barrier mostly just stood there. In a follow-up study of the children at 2, girls were no weepier than boys and were far more active problem solvers: More than 20 percent of them got out, compared with 7 percent of the boys.

One would have to be very unobservant or very stubborn to deny that some traits are more common in one sex than the other. But, as Stossel noted, "individual differences are often much greater than the differences between the sexes." Still his own comments about how we are "biologically hard-wired to be different" seemed to leave little room for individual variety, as did all his footage of girls with tea sets and boys with swords. We shouldn't forget all the girls we now see playing basketball or soccer, and even taking part in soapbox derby races where they now make up a third of the contestants; or the boys who care tenderly for a puppy or kitten.



When within-sex variation is taken into account, most psychological sex differences are in the small-to-moderate range, meaning that the distribution of a trait or behavior between the sexes is somewhere between 52–48 and 66–34. Sometimes, the research corroborates stereotypes and sometimes not.

The Evidence of Gender

Much as they diverge ideologically, difference feminists and biological determinists share a propensity for sweeping statements based on modest evidence.

In *You Just Don't Understand,* Deborah Tannen cites a finding by psychologist Campbell Leaper that 5-year-old girls interact in a "mutually positive" manner, while boys exhibit "negative reciprocity" by which one boy tries to control and the other withdraws. In fact, Leaper found virtually no sex differences among children 4 to 6. Between 6 and 9, the boys were a bit less cooperative and the girls noticeably more so: 42 percent of their exchanges were "mutually positive" compared with 21 percent of the boys' exchanges. But even older boys collaborated much more than they sought to dominate, and they exhibited very little "negative reciprocity."

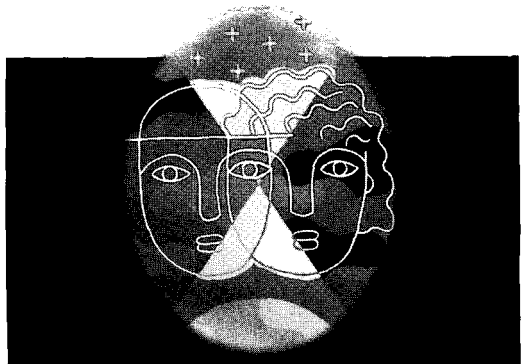
On the traditionalist side of the political spectrum, law professor Kingsley Browne speaks of "substantial evidence for sex difference in the spontaneous emergence of leaders." His source is a review of studies showing that overall, in small groups working on a task, men emerged as leaders 58 percent of the time. The difference was largest in laboratory studies and barely present in natural settings (mostly college students working on class projects). Male leadership was also most likely in groups that met once for fewer than 20 minutes; the division was close to 50–50 if there was more than one meeting. In other words, the more the conditions of the study resembled the real world, the smaller the difference.

When within-sex variation is taken into account, most psychological sex differences are in the small-to-moderate range, meaning that the distribution of a trait or behavior between

the sexes is somewhere between 52–48 and 66–34. Sometimes, the research at least partly corroborates the stereotypes; often, many pieces of the puzzle don't fit. Consider Tannen's basic claim: The social world of boys is hierarchical and concerned with power, while that of girls is egalitarian and concerned with intimacy.

One observation of same-sex pairs of preschoolers in the playground seems at first to back Tannen: Boys used "heavy-handed persuasion"—physical force or threats—in 22 percent of their conflicts, compared with 9 percent for girls; the percentages were reversed for "conflict mitigation." Yet both sexes settled about two-thirds of their conflicts by "moderate persuasion" (which included giving orders). And "conflict mitigation" did not always denote concern with relationships: It included indirect displays of anger, such as staging a fight between disputed dolls, and walking out of a conflict situation.

There is evidence that in dealing with conflict girls are somewhat more concerned with maintaining relationships and boys with asserting control. Yet plenty of research casts doubt on beatific visions of the warm, egalitarian girl "communities"—as does, of course, the personal experience of anyone who has been a girl. Boys' power contests are more often expressed in physical aggression. But according to behavioral scientist Diane Jones, "competition and asymmetric relationships are as much a part of female groups as male ones."



In one experiment, girl groups tended to have "a single dominant individual," while boys showed "more equal participation" in using a film viewer. Nor did the alpha females get to the top by being nurturing: They gave commands, hit, and disrupted others' viewing much more often than other girls.

In an especially intriguing experiment, preschoolers in single-sex groups of four were given a film viewer designed so that a child could watch a cartoon through an eyepiece only if two others cooperated by turning a crank and pressing a switch. There was much more playful pushing and hitting among boys. But the girls weren't shy about giving orders, using putdowns, or even blocking the viewer so that another child couldn't watch. Moreover, girl groups tended to have "a single dominant individual," while boys showed "more equal participation" in viewing. Nor did the alpha females get to the top by being nurturing: They gave commands, hit, and disrupted others' viewing much more often than other girls.

The picture is equally complex when it comes to other truisms:

■ *Men are competitive, women cooperative.* In a survey in Minnesota schools in the early 1980s, 45 percent of students who scored above average on competitiveness were female. Kingsley Browne cites this study as proof that "competition...is a more unalloyed positive experience for boys." But being highly competitive had drawbacks—such as feeling too pressured—for young children of both sexes. By high school, this pattern disappeared for boys and *almost* disappeared for girls, and more competitive girls had a stronger sense of self-worth.

A few years later, another study found that when high school athletes rated the relative importance of various goals in sports, girls emphasized teamwork somewhat more than boys did, while the reverse was true for winning and learning to be tough. Yet the similarities were far greater: Both sexes ranked cooperation first, followed by fitness, self-esteem, character building, and finally competition.

■ *Men are autonomous, women "relational."* A 1971 study did find a dramatic gap: 80 percent of the women, but only half of the men, defined their identity in terms of interpersonal connections. By the 1980s, this difference had all but vanished. When San Francisco State University English professor Jo Keroes analyzed student essays on personal dilemmas they had faced, she expected men to focus on self-determination and women on relationships. To her surprise, "autonomous" themes prevailed for both sexes. Another study was construed by its authors as supporting Gilligan's thesis since college women scored higher on "intimacy" than on "autonomy"—but so did the men.

■ *Men don't share their feelings (especially not with other men).* When scholars Kathryn Dindia and Mike Allen analyzed more than 200 studies on self-disclosure, they found surprisingly minor differences: "If approximately 45 percent of men would disclose a particular item, approximately 55 percent of women would disclose the same information." Subsequent research supports this conclusion. Researchers Steven Duck and Paul Wright even question the cliché that women have intimate friendships while male buddies just do things together: Both, they say, "are attuned to caring, supportiveness," and other emotional aspects of friendship. Ironically, Duck and Wright admit to helping perpetuate "the fashionable dichotomy" in their earlier work: for instance, reading much into the finding that women's meetings with friends were usually spontaneous and men's were more often

planned—on the basis of a 10-percentage-point gap.

■ *Men deal with stress by trying to solve the problem, women by brooding or seeking emotional support.* Actually, both women and men take the problem-solving approach most often, followed by support seeking and then by emotional responses such as self-blame and distraction. Are there differences? Some. In one study, men reported using problem solving as the coping technique of first resort 56 percent of the time in recent stressful situations, compared with 44 percent for women. But other methods lagged far behind for both women and men.

And what about Tannen's classic you-just-don't-understand scenario, where the woman complains about a problem to get sympathy, the man offers a solution, and she gets upset? Her evidence for this archetypal misunderstanding consists of anecdotes, obviously meant to illuminate us with a flash of recognition. But while it did just that for one of my male friends, another recalled Tannen vignettes in reverse when *he* sought sympathy from women who "snapped into an I-have-to-give-advice-right-now mode." And for one woman, the recognition involved herself in the "male" role of would-be problem fixer when talking to her mother.

Had Tannen wanted to cite research, it might have been difficult: Several studies that look at "nurturant" and "problem-solving" responses to another's distress have found slight differences—but no evidence of a gender gap that requires self-help books to bridge.

■ *Women want love, men want sex.* Gender differences in sexual attitudes and behavior are much more dramatic than in virtually any other area. It is surely overconfident to discount biology, as do the authors of the 1994 report *Sex in America: A Definitive Survey*, who flatly state that there is "no reason to believe these differences...reflect some sort of genetic imperative." Indeed, it would be strange if reproductive roles had no effect on men's and women's attitudes toward sex. In this sphere of life, evolutionary logic makes the most sense.

But any theory which reduces human motivation to a mechanism that works independently of conscious intent can lose touch with reality. Robert Wright asserts that in casual sex, "the worst likely outcome for the man (in genetic terms) is that pregnancy would not ensue." Never mind that in real-life terms, the worst likely outcome *is* that it *would*. Several studies confirm that, as evolutionary theory would predict, men are more distressed by a woman's sexual infidelity (a threat to paternal certainty) and women by a man's emotional attachment to another woman (a threat to resources). But that doesn't explain why anywhere from a sizable minority to a slight majority of men find emotional infidelity more distressing—or why more women say that they would consider divorce if their spouse had a one-night stand with a stranger.

Other studies point both to undeniable gender gaps and to much common ground. In the National Health and Social Life Survey (on which *Sex in America* was based), one in four women under 25, one in five women in their 30s, and about one in three men held a "recreational" view of sex. The most common outlook for both sexes was "relational," linking sex to emotional intimacy but not necessarily marriage. When respondents in another survey were asked to pick 10 out of 48 wishes that they would most want fulfilled, sex "with anyone I choose" was selected by one in 17 women and one in four men. Yet the wish that got the most votes from both sexes, 73 percent of the women and 58 percent of the men, was "to deeply love a person who deeply loves me."

The way we think about differences and similarities between the sexes has major consequences. If there is no innate sex difference in ability or inclination to be a physicist or engineer, women's underrepresentation proves that they are held back by discrimination or social pressure.

Equity vs. Equality

Clearly, the way we think about differences and similarities between the sexes has major consequences. If there is no innate sex difference in ability or inclination to be a physicist or engineer, women's underrepresentation proves that they are held back by discrimination or social pressure. If there is a difference, one could still call for special programs for girls, perhaps at the cost of steering some away from fields that suit them better. Or one could just focus on equal opportunity—even if, when the dust settles, women would make up 30 percent of engineers (as psychologist Janet Hyde estimates from spatial ability tests) or fewer.

But that wouldn't do for the equality-*über-alles* school. When, on his *Boys and Girls* special, John Stossel asked Bella Abzug if equality meant equal numbers in every field, she fired back, "Fifty-fifty—absolutely." If this notion of equality is mis-

guided, clinging to it can lead us to see sexism where there is none and pursue coercive social engineering—or even imperil lives, as when fire departments' fitness standards are weakened to accommodate women.

Yet assumptions based on seemingly solid data about sex differences can miss the mark. In her 1973 antifeminist polemic, *The Female Woman*, Arianna Stassinopoulos (now Huffington) predicted that equal opportunity without artificial parity would lead to "a small rise in the numbers of women accountants, engineers or geologists but a big rise in the numbers of female physicians, psychiatrists, lawyers, clergymen." So far, she has been correct about engineers and geologists. But in 1993, about half of accountants in the United States were female.

The history of Title IX of the 1972 Education Amendments, which bans sex discrimination in school athletics, illustrates the difference between equity and numerical equality. The law is almost universally applauded for opening up unprecedented opportunities for girls and young women to compete in sports. But recently, Title IX has also been interpreted as requiring that similar proportions of male and female college students be involved in sports—even if fewer women are interested. To comply, excellent men's sports programs are being killed, so that a male student who wants to participate in sports has less opportunity to do so than his female counterpart.

But conservatives who criticize this trend sometimes seem to assume a static gender gap in levels of interest in athletics. Actually, girls' enthusiasm for sports has skyrocketed. So say not just statistics (girls now make up about 40 percent of high school athletes, up from 5 percent in 1971) but middle-aged men who coach children's teams.

Today, we are learning more about the biological roots of sexual identity. Yet at the same time, we are seeing fewer sexual divisions. In England, psychological tests show that sex differences found among older people on such items as "I often try to get my own way regardless of others" do not hold for those under 30—perhaps due less to changes in personality than to younger women's greater candor about such traits. American women have become less risk-averse players in financial markets; on the darker side of risk taking, they are catching up with men in problem gambling and in drug and alcohol abuse.

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Indeed, most scientists who study the biology of sex differences agree that nature and nurture interact in complex ways: Our activities and environment can alter brain organization and hormonal makeup. If, as Kingsley Browne suggests, it's "adaptive" for a child to imitate same-sex models, girls surrounded by images of strong women, from athletes and political leaders to television and film characters, will probably grow up different from earlier generations.

Pink, Blue, or Khaki?

One way to inject common sense into this debate is to shift the focus from groups to individuals. Otherwise, "difference talk" has its dangers. A boy will do better on a math test than a girl 63 percent of the time—whatever the reason. But if you automatically assume that a male is better at math than a female, whether in hiring someone or in helping a student make a career decision, you'll be wrong nearly four out of 10 times.

Browne wonders why "a tendency for men to exhibit male traits and for women to exhibit female traits is inferior to a situation in which the traits are distributed at random." In a sense, he is right: If women make up 63 percent of people with one trait and 33 percent of those with another, that shouldn't be a problem. But if these unevenly distributed qualities are designated as male and female with no quotation marks, people may be hindered from developing or acting on "cross-sex" traits.

Such assumptions may also cause people to be judged, perhaps unconsciously, by sex-based generalizations. Men get 40 percent more speeding tickets when speed is measured by radar but *250 percent* more when the judgment is made by an officer's naked eye—partly, perhaps, because of chivalry, but also because the real gender gap in speeding is reinforced by stereotypical expectations.

That men are more likely to think and act in some ways and women in others, and that every man or woman should be treated as an individual, are two ideas we ought to be able to hold at the same time. This means avoiding comments like, "Each sex seems to have a different definition of what constitutes success in life" (as Browne writes, quoting from a 1968 monograph by psychologists Joseph E. Garai and Amram

Scheinfeld). Sexes don't have definitions of success; people do. But it also means accepting that in a nonsexist society, most corporate executives may be men and most "primary caregiver" parents may be women.

Such an approach also negates arguments for including women in various fields on the basis of their special strengths, given how unpredictably these strengths are distributed. Robert Wright suggests that affirmative action should be based on the premise that women are less prone "to sacrifice the organization's welfare to personal advancement," and hence good for business. But the world is full of women looking out for No. 1, and they would be far quicker than their meeker sisters to reap the benefits of quotas. Women managers, some studies show, may not even be more sympathetic toward employees' family problems.

Just as specious is the notion that women *as women* have something unique to contribute to human understanding. A woman who criticizes individualism, competition, or the elevation of reason over feeling will be in agreement with plenty of men, from Rousseau to Tolstoy to Marcuse. (Rachel Carson, sometimes cited as a female voice affirming an organic vision of the sanctity of life, drew her inspiration from Albert Schweitzer.) Given the range of "male" and even "white male" thought, it's unlikely than women can produce ideas entirely free of its influence; indeed, it would be ludicrous to try. Worse, "difference feminism" can become a new straitjacket for women: Gilligan and the authors of the 1986 women's studies bible, *Women's Ways of Knowing,* disparage women who see "male" individualism or rationality as liberating.

The trickiest part, perhaps, is applying an appreciation of sex difference and individual difference to personal life. If one in three young men and one in five young women think sex just for fun is great, that's enough of a gap for many girls who want romance to run into boys who want a romp—one reason generalizations strike a chord. But life confounds all dogmas, whether of sameness or of difference, so that men who value marriage and relational sex—and women who don't—are not uncommon.

Indeed, a 1983 critique of the sexual revolution by writer and psychotherapist Peter Marin argued that liberation had turned into disillusionment for many women and men alike, except that "men are less articulate, feel less justified than women in their public complaints." Likewise, the male-fear-of-commitment cliché may have been an excuse for many women to avoid confronting *their* commitment anxiety. So concluded two people who helped propagate the cliché—Steven Carter and Julia Sokol, authors of the 1984 best-seller *Men Who Can't Love,* whose 1993 follow-up was titled *He's Scared, She's Scared.*

Life confounds all dogmas. An armistice in the gender wars is unlikely to work if it focuses on acceptance of collective but not individual difference. A world divided into updated versions of pink and blue would be only marginally less progressive than a world of khaki uniforms.

One could point to the popularity of *You Just Don't Understand* or *Men Are From Mars, Women Are From Venus* as proof that relationship problems stem from living with a member of a different species whom we mistakenly treat as one of our own. But does it prove much beyond the fact that intimacy is messy and complicated? Don't mothers and daughters, fathers and sons, siblings, same-sex lovers feel at times that they must cross a labyrinth to reach one another? Mars-Venus advice promises a quick fix: You just pull out the blue file marked "men" or the pink one marked "women" instead of trying to deal with the other person's unique qualities, or with your own inadequacies.

In part, the fascination with difference is a justified response to the excesses of unisex feminism. Only in women's studies can a utopia where gender matters no more than eye color hold any appeal. Sexual differentiation in some sense is a profound human need. The idea of a child being raised as an "X," its sex known only to the parents—the premise of a story by Lois Gould published in an early issue of *Ms.* as a rousing statement of liberation—is likely to strike most people as deranged.

Some people, fed up with a feminist creed that simultaneously holds that women and men are the same *and* that women are innocents and men are beasts, welcome the message that we should accept our differences. But an armistice in the gender wars is unlikely to work if it focuses on acceptance of collective but not individual difference. A world divided into updated versions of pink and blue would be only marginally less progressive than a world of khaki uniforms.

Cathy Young (cathyyoung1@compuserve.com) is a REASON *contributing editor. This article is adapted from her new book,* Ceasefire: Why Women and Men Must Join Forces to Achieve True Equality, *published by The Free Press.*

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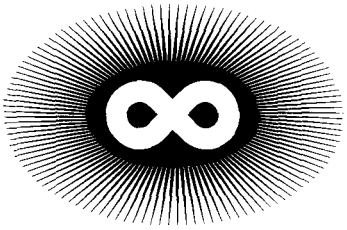

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THE New Tru

What's behind the resurgence of antitrust activism—and why it's bad news for consumers.

stbusters

By James V. DeLong

Joel Klein is a famous man. The head of the Antitrust Division at the U.S. Department of Justice usually toils in anonymity, known only to the in-groups of the bar. Not Klein. He has sued Microsoft, the most prominent company in America's jazziest industry, and demonized the world's richest human, Bill Gates. He has assaulted the ubiquitous credit card franchises of Visa and MasterCard and blocked important aerospace industry consolidations. He makes speeches extolling the pivotal role of the Antitrust Division in the "new economy" of globalization and information. These acts have earned him serious attention in the national press.

Not to be left behind, Klein's fellow antitrusters at the Federal Trade Commission are equally active. They have beaten up on superstores by stopping the merger of Staples and Office Depot and by knocking down important marketing practices of Toys "R" Us. Like the DOJ Antitrust Division, the FTC has gone high tech. It is challenging Intel, the grandee of computer chips, and probing Cisco Systems, the dominant company in Internet switching hardware. In a recent suit against a drug company, the FTC asserted a heretofore unknown authority to force an alleged monopolist to refund to consumers $120 million in allegedly ill-gotten profits.

Professional discussion of this surge in antitrust activism is proceeding at two levels. One is the highfalutin language of bar association meetings and academic conferences, where sessions are given titles like "Antitrust Enforcement and High Technology Markets," "Networks, Lock-In Effects, and the New Economy," and "New Approaches to Reviewing Horizontal Agreements." In this world, Platonic guardians mull over the implications of technological change and devise optimal policies to safeguard American enterprise. They "open up a dialogue with the bar and the academic community about antitrust doctrine," as Klein put it in one of his speeches, on topics such as "the relationship between antitrust and intellectual property, the significance of...network effects and tipping points... the impact of differentiated products theory, the role of potential competition and innovation markets, and [the meaning of] 'agreement.'"

The second level of analysis is more skeptical, grounded in the public choice school of economics. Public choice theory holds that exercises of govern-

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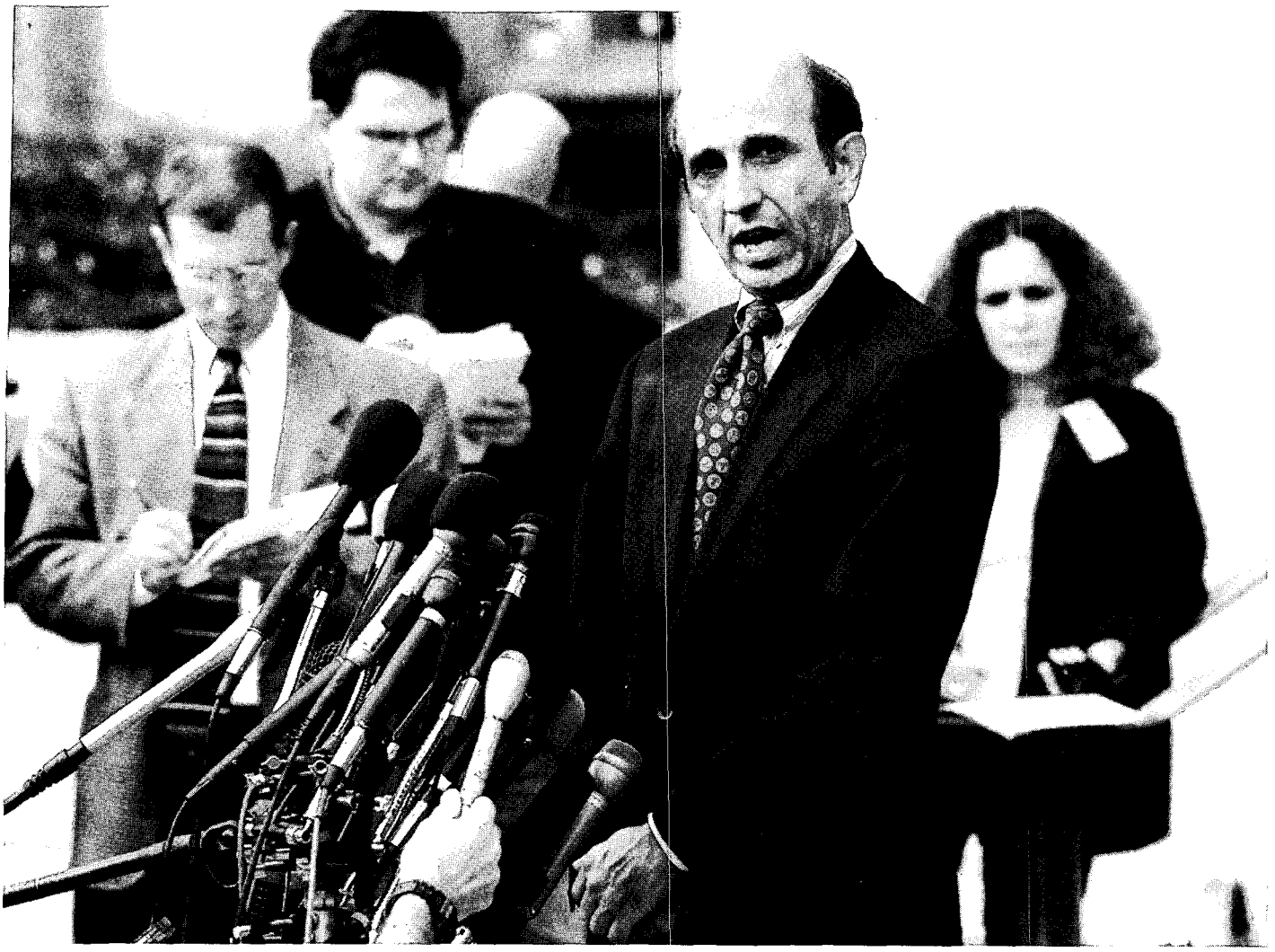


AP / WIDE WORLD PHOTO

DOJ's Joel Klein: Platonic guardian or ideological condottiere? Public choice theory holds that exercises of government power are driven by the material interests of the people who wield it and by the private parties who can reward them.

ment power are driven by the material and ideological interests of the people who wield it and by the private parties who can reward them with campaign contributions, money, job security, or whatever else they value. Viewed through the lens of public choice theory, the recent burst of antitrust activity is not primarily about consumers or competition. It is about four kinds of interests: 1) competitors of successful firms who want to hamstring their rivals, appropriate part of their businesses, or turn the clock back so they can re-run the race; 2) companies blown by the winds of technological change and looking for ways to nullify their disadvantage; 3) the personal ambitions of antitrust enforcers, who do not prosper in quiet times; and 4) the class interests of the legal profession, which are served by a combination of activist bias and mushy theories.

Only a taste of this view creeps into the formal talks at antitrust conferences. To get the full flavor, you must hang out in the corridors and hotel bars, and stick around for the after-conference receptions. There you hear jokes like this one: "What is the government's theory in the Microsoft case? That the state of California has more computer companies than the state of Washington, and a hell of a lot more electoral votes." Or this one, about "Gore-Techs," the high-tech entrepreneurs who confer with Vice President Al Gore: "What is Gore-Techs? A new fabric made by combining silicon and money, used for wrapping up politicians."

In these less formal settings, last summer's Senate Judiciary Committee hearings on Microsoft, in which Chairman Orrin Hatch (R-Utah) laid into Bill Gates, are dismissed with, "What else would you expect from a senator who has Novell in his state?" Testimony in the ongoing Microsoft trial about the frequency with which the head of Netscape, the moving force behind the lawsuit, met with Klein and other Antitrust Division representatives is greeted with blasé yawns. So are testimony and e-mail messages showing that high-tech companies regard government antitrust action as simply one more tool in their competitive arsenal, an alternative to price cuts or new products. And as

the head of Netscape said when asked why he did not file his own suit, it is much cheaper to use the government's lawyers.

Behind the scenes at the conferences, you hear snickers about the innocence of Microsoft, which thought it could sit out there in Redmond writing software and ignoring Washington, D.C.—as if such a big pot of wealth could go unnoticed by a rapacious imperial capital. The idea that perhaps a company should be able to do its business and ignore Washington is regarded as hopelessly naive. Microsoft is now playing catch-up, adding former congressional aides to its staff and boosting its budget for political contributions.

The suit against Visa and MasterCard, announced in October 1998, also evokes grins. (See "Credit Where It's Due," January.) The Antitrust Division's press release speaks of harm to consumers and of an industry that is "competitively impaired." But the arrangement that the government just attacked has been around a long time and was created in part due to antitrust concerns expressed by the DOJ almost 20 years ago. Prior administrations investigated and declined to take action. The corridor talk notes the close relationship between the Clinton administration and American Express, which has been complaining about its rivals for years. Presidential friend Vernon Jordan is an AmEx director. According to news accounts, AmEx has other ties to the White House: It bought heavy advertising from the 1993 inaugural committee, it won the White House Travel Office account, and it has replaced Diner's Club as the government-issued credit card for federal workers.

In the 1997 Office Depot/Staples merger case, the FTC defined the relevant market as "office supplies sold by superstores," even though the two chains together sell only about 5 percent of all office supplies. Wal-Mart alone sells more than this, and bulk mail-order firms sell another huge chunk. Everyone, except the FTC and the federal district judge who upheld its decision, regards the commission's market definition as a laugher. (See "Pricing Pencils," August/September 1997.) But no one can figure out who had the political clout to persuade the FTC to adopt such a silly position. The Wall Street arbitragers who lost a bundle when the deal cratered think the FTC's action was triggered by complaints from Office Max, the third major superstore chain, which stood to get some assets on the cheap if the government forced the merged entity to spin them off in the name of protecting competition.

Last March, when the DOJ Antitrust Division nixed Lockheed Martin's effort to acquire Northrop Grumman, the formal reasons involved concentration in the defense industry. The corridor talk this time actually made it into *The Wall Street Journal.* Lockheed had been blindsided by rival Raytheon, which gave the government mountains of negative information. In its June 1998 story, the *Journal* noted that Lockheed, not expecting trouble, had failed to adopt the usual techniques of the merger game: "lobbying Capitol Hill, working the executive branch and creating a drumbeat of support in the media."

The interests of selected businesses and political figures are not the only ones served by the trend toward antitrust activism. The corridor lounger also notes a certain incestuousness among the conference participants. Almost all the private lawyers and economists on the panels used to work for the government, while the government reps used to work in the private sector, and most will return there at some point. Even the career employees turn free agent if the stars are right. The FTC litigator who led the Staples case left a few months later for a well-paid partnership in a major law firm. In the condottiere world of lawyering, his victory in a case that looked like a dog greatly increased his market value. The arbs who lost big as a result want him on their side next time.

It is a new springtime for antitrust lawyers and economists, promising a return to the good old days of three decades ago. Their memories of that era are bathed in a golden glow. It was a time when antitrust regulators were hyperactive, inhibited only by the need to invent a plausible scenario under which a business arrangement might be regarded as "anti-competitive," and this concept could be given any of several not necessarily consistent meanings. Given such a nonstandard, the government won almost every time it challenged a business arrangement. But the charade required a lot of lawyers and economists.

This era ended in the 1970s. Two disastrous pieces of monster litigation—one against IBM by the DOJ Antitrust Division, the other against the oil companies by the FTC—ground on for years. Each went long past the point where it became obvious that the government lacked a coherent theory of the supposed offenses and long past the point where changes in the industry and in the world turned the case into a joke.

During the same period, the University of Chicago school of antitrust analysis began to convince judges and law students, and eventually even the bar, that many of the government's anti-competitive scenarios were not plausible at all and that arrangements which were valuable to consumers were being outlawed. Antitrust law was suppressing

After almost two decades of marginal relevance, the thrill of activism is back. Corporate officers and Wall Street arbs once again furrow their brows when they speak of "The Division" or "The Commission." Members of the opposite sex no longer flee when you say, "I do antitrust."

Even mighty Standard Oil, the great bête noire for trustbusters was a symbol more than a true villain. By 1911, when the Standard "monopoly" was broken up by the Supreme Court, eight other large integrated oil companies were competing with it.

rather than nurturing competition.

This revolution in antitrust thinking was consolidated in the 1980s, when the Reagan administration pared enforcement back to the hard core of attacking agreements to fix prices or divide markets, which almost all antitrust analysts regard as beyond the pale, and preventing mergers among direct competitors in highly concentrated industries. The number of cases dropped off as enforcers ceased to invent new theories, and businesses, with a fairly clear idea of the line between legal and the illegal, could adjust their conduct with little reference to the high priests of antitrust.

Antitrust practice came to mean filing the notification forms the government requires before a corporate merger can be consummated and negotiating the terms on which the government would approve. This often meant selling off a division or two in the name of preserving "competition" in some minor market or product line, but the issues were usually marginal, rarely involving fundamental questions of antitrust purpose and policy. Antitrust became a particularly boring kind of regulatory law, consisting mostly of copying thousands of pages of documents to ship over to the DOJ and the FTC for pre-merger review.

Now, after almost two decades of marginal relevance, the thrill of activism is back. Corporate officers and Wall Street arbs once again furrow their brows when they speak of "The Division" or "The Commission." The telephone rings. Hours are billed. People who say "let's do lunch" actually follow up. Headhunters pass out business cards. Members of the opposite sex no longer flee when you say, "I do antitrust."

It is important to avoid what the English writer C.P. Snow called "the cynicism of the unworldly." One should not underestimate the impact of sincere belief on the actions of government officials. The Antitrust Division, the FTC, and the private bar are full of honest lawyers who would be outraged at the suggestion that they are acting for personal or class interest, or that they are stretching the law in the interests of ideology. But it is also important to recognize that self-interest is the aphrodisiac of belief and that adopting the theories underlying the new activism is much to the benefit of the antitrust professionals on both sides. To those with a bent for public choice explanations, the enforcers, flogged on by the politicians and the competitors, have seized upon the computer, the information revolution, and the Internet as excuses to reverse the cautious "first, do no harm" antitrust policy of the past 20 years and restore the promiscuous activism that characterized the 1960s.

The question, of course, is whether these dour apostles of the public choice view are right. Answering that question requires a return to the basics. The antitrust laws stem from our collective fear of monopoly, a bred-in-the-bone knowledge that a supplier of a good or service who lacks competitors will jack up the price, cut the quality, become arrogant and unresponsive, and in general behave obnoxiously. Economists can give you good explanations for this, complete with charts and graphs of supply and demand curves made out of solid and dotted lines and annotated with lots of alphas and deltas. They can explain with precision why raising the price increases the monopolist's revenue even if it cuts sales, and they can tell you the size of the price hike that will maximize the loot.

The noneconomists among us fear monopolies even without the charts and graphs, based on common sense. After all, raising the price is logical; it is what we would do if we had a monopoly of our own. We also look to our experience. Think of the U.S. Postal Service, cable television companies, state liquor stores, or the local public school. Monopolies all, and legendary for unresponsiveness, ineptitude, and overcharging. But these things are mostly peripheral to our lives, or there are safety valves in the form of substitute goods or direct action, so the lack of competition is an annoyance rather than a disaster. Imagine the impact of a complete monopoly in a truly essential product, such as automobiles or groceries.

The fear of monopoly that triggered the first of the big antitrust statutes—the Sherman Act of 1890, which outlawed combinations in restraint of trade and attempts to monopolize—was far from unfounded. Alfred D. Chandler Jr., the eminent business historian, documented the situation in the late 19th century in his classic book *The Visible Hand.* The rise of mass production, combined with the railroad, the steamship, the telegraph, and the telephone, created the possibility of nationwide marketing and management. As output exploded, prices dropped precipitously. Many industries responded by attempting to put together cartels intended to reduce output and stabilize prices. The means varied—contracts, holding companies, corporate voting trusts, mergers—but the goal, as explicitly stated by the participants, was to attain the joys of monopoly power over a market.

Considering these expressed intentions, public fear was rational, but history has shown that it was largely unnecessary. It turned out that amalgamation is not alchemy, and the trusts could not achieve their goal of excluding competitors and sustaining prices at monopoly levels. The experience of the National Cordage Association, recounted in

Chandler's book, illustrates the vulnerability of monopoly schemes. The NCA could not achieve economies of scale in operation or management. Nonetheless, it was forced to pay premium prices to lure competing companies into selling out, which stuck it with huge capital costs. The bought-out competitors then used their money to start new cordage companies that were more efficient than the NCA, so they could undercut its prices. The association went bankrupt in 1893.

Even mighty Standard Oil, the great bête noire for trustbusters of the late 19th and early 20th centuries, was a symbol more than a true villain. By 1911, when the Standard "monopoly" was broken up by the Supreme Court, eight other large integrated oil companies were competing with it. Before that, Standard never tried to sustain prices at high levels. The history of oil during the late 19th century was one of huge expansion in markets and facilities and steadily falling prices.

Many of the complaints about Standard came from medium-sized refiners that lost cozy local monopolies to Standard's rationalizing and price cutting. The same pattern has been repeated many times. As changes in communications and transportation create possibilities for new forms of business organization that might make things cheaper and better for consumers, firms that are doing well under the old forms fight back. This was true in the late 19th century, and it remains true today.

Often, the beneficiaries of the status quo cry "Monopoly!" Almost always, they are wrong. If you look back at the examples of monopolies given a few paragraphs ago, you will notice that all are public institutions or publicly regulated businesses. It is impossible to find examples of truly private monopolies, except on a minor scale. In areas where the natural technical and economic structure of an industry would tend toward monopoly, such as utilities or railroads, public regulation was imposed early (with dubious results—but that is a different tale). In other sectors, monopolies are rarely developed and never sustained.

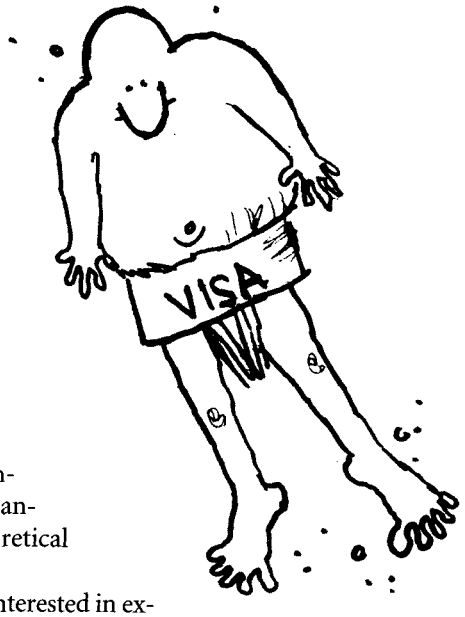
Some thinkers, such as Dominick T. Armentano, a professor emeritus of economics at the University of Hartford and a scholar of antitrust history, have responded to this experience by advocating the elimination of the antitrust laws. They argue that the benefits from the few instances in which these laws might do good are outweighed by the harm caused by their inevitable misapplication at the behest of the political system.

Others are less willing to scrap the antitrust laws. They note that it's always possible that the members of an industry might succeed in getting together and setting a monopoly price. Perhaps in 1911 Standard and the other eight big oil companies could have set up regular meetings and fixed prices or merged into one company. Over the long term, such a monopoly would not last, any more than OPEC lasted. As the price remained high, new entrants would want to get a cut and would have to be brought into the cartel. Eventually, shares would get so diluted that some members would find it worthwhile to break off and cut the price, thereby ruining the system.

But a cartel can cause pain while it lasts, as did OPEC, and the wait for its inherent contradictions to assert themselves can seem awfully long for us short-lived humans. So most people who study the problem, whatever their general political orientation, agree that a core of antitrust enforcement is important. In particular, they agree that price fixing among competitors should be outlawed, and so should merger to monopoly and agreements to divide markets and set up a series of monopolies in different sectors of the economy. This was the basic antitrust policy of the Reagan years.

As the abolitionists love to point out, though, when you take this first step you step on an intellectual banana peel that sends you skidding down a slippery slope. The fundamental problem is that the meaning of "monopoly" is amorphous, and the ambiguity leaves unclear exactly what the law is trying to prevent, encouraging ad hoc approaches and governmental mischief.

A true, clear monopoly would be something for which there are no substitutes. If you are drowning in the middle of a lake, and someone in a boat comes along and asks if you want to buy a life jacket, he can fairly be said to have a monopoly. Short of a situation like that, there are only varying degrees of power to charge a premium price. A beef company's power is limited by the availability of chicken and fish, and a local grocery store's power is limited by your ability to shop in a neighboring town. In each case, the power is real but limited. So at what point does this power justify government action? There is no clear answer, and no satisfactory theoretical basis for developing one.



This fuzziness gives those interested in ex-

"They tell the story of 'The Emperor's New Clothes' a little differently around here. It goes along as usual until the little boy pipes up, 'That man is naked!' Then, in the government version, the emperor turns and says, 'Kill that kid.' And they do."

panding antitrust enforcement, including the enforcers, a lot of leverage. They argue that any power over price, however small, in any identifiable product market is illegal. Then they seek to define the market narrowly, making it easy to find a price effect. In a recent paper for the Cato Institute, University of Mississippi economist William F. Shughart II, one of the most relentless public choice critics of antitrust policy, lists some markets defined by the government: "high-priced, non-ethnic frozen entrees"; "noncarbonated, ready to serve, naturally or artificially flavored fruit drinks, fruit punches, or fruit ades which contain 50 percent or less fruit juice and are customarily sold under refrigeration to the consumer"; "direct contract front-loaded trash removal in Dallas." These market definitions do not have quite the same impact as "oil" or "steel."

The next step in expanding the realm of antitrust is to use static economic models to predict an effect on price, often ignoring strategic responses available to competitors that would erode any monopoly power. In analyzing the Staples/Office Depot merger, for example, the FTC noted that slightly higher prices prevail in some areas where only one of the companies operates. It assumed this pattern was immutable, ignoring the ability of superstores, mail-order houses, and customers to observe it and react.

By the time these steps are taken, the result is ordained. Anyone playing by these rules who cannot find a monopoly on every corner isn't trying.

This game discourages efficiency-enhancing mergers. It also discourages arrangements among firms, such as joint ventures and strategic partnerships, that could create innovative products and reduce costs. Such deals always involve some agreements on price and territory because the partners must decide how to split the proceeds. Each also needs to ensure that its partner does not use it for a time, then muscle it out of the way and take over the whole business.

Banning these contracts outlaws many worthy projects. As Fred Smith, head of the Competitive Enterprise Institute, explains: "Any company wants to do many different things. But it can be only one size, which means it cannot be exactly the right size and have exactly the right mix of skills and resources for each of the things it wants to do. For some it is too big, for others too small." If different and possibly competing businesses can integrate some of their operations without merging entirely, they can form entities that are the right size for the venture at hand. The size that is appropriate for inventing a software product, for example, may be different from the size needed to make it commercially viable. Manufacturing and marketing require still different sizes, talents, and structures. The industry is filled with people patching together the temporary alliances needed to fill the gaps in their own organizations. The result, in software and elsewhere, is a flexible and adaptive economy, which serves consumers well.

For a century, antitrust enforcement has been hostile to such partial integrations among businesses. Ironically, this hostility creates pressure for firms to merge completely. Due to oddities of antitrust law, merger may be allowable under circumstances where partial integrations by contract would be blocked.

In the 1960s, scholars with a public choice perspective began analyzing whether past antitrust actions had actually benefited consumers. It is not an easy question to research, but a variety of ingenious studies have looked at stock prices, scholarly opinions, competitors' reactions, and other indicators. The results are strikingly consistent: Antitrust actions do not help the public, though they may help the special interests that trigger them (while providing well-paid employment for antitrust professionals). CEI's 1997 *Antitrust Reader* and the 1995 book *The Causes and Consequences of Antitrust: A Public Choice Perspective* (University of Chicago Press), edited by Shughart and Emory University economist Fred McChesney, are good introductions to this literature.

This research, combined with the dearth of empirical work on the other side, was an important factor in the reforms of the 1980s. Proponents of interventionist antitrust had an embarrassing lack of good examples. As McChesney and Shughart point out, when you have a century of experience with a program and virtually every landmark case looks to have been a mistake, perhaps it is time to stop saying, "well, we'll get it right next time," and start rethinking the basic premises.

The current activists are having none of this. Quite the opposite. The seminar sessions at antitrust conferences—the serious part, where the participants do not joke about Gore-Techs—operate as if none of this rethinking happened. The governing assumption is that basic antitrust policy and doctrine was and is sound. The question is whether this tool that has served us so well can be applied to the growing high-tech economy as it stands, or whether it needs to be adapted and extended to reflect new realities. The possibility that the antitrust emperor might be stark naked is ignored.

This should not really be surprising. More than 20 years ago, when I was a middle manager in the FTC, an exasperating commission action prompted

me to say to another staffer: "They tell the story of 'The Emperor's New Clothes' a little differently around here. It goes along as usual until the little boy pipes up, 'That man is naked!' Then, in the government version, the emperor turns and says, 'Kill that kid.' And they do." Public choice analysts know that an agency-emperor will seize any opportunity to off the uppity kid and re-impose the myth of the beautiful robes. It will be assisted enthusiastically by private interests who want to turn the myth to their own advantage.

As a result, there is now a gusher of amorphous theories justifying renewed antitrust activism. For example, theories of "path dependence" and "lock-in" hold that society can become committed to an inferior technology, unable to break free when a superior one comes along. It is an interesting idea with little empirical support, as has been demonstrated by economists Stan Liebowitz and Stephen Margolis in the pages of REASON ("Typing Errors," June 1996) and at greater length in the academic literature. The Dvorak typewriter keyboard was not really significantly better than the old QWERTY version, and now that anyone can go Dvorak with a computer keystroke, almost no one does. The other standard example, the triumph of VHS over Beta in videotape, is also wrong. VHS, with its longer recording time, was regarded by consumers as a better product.

It's true that once companies or consumers buy into a technology they will incur costs if they want to change later. But this is hardly a new development; the same is true for purchases of equipment, constructing buildings, or any other investment. Change occurs only when a new technology is sufficiently superior to justify the switching costs, or when investment is turning over anyway. So what? The fact that a company that introduces a good product gets some first-mover advantages is one of the mainsprings of innovation. Is the government now saying this should be foreclosed?

Another phrase popular among antitrust activists is "network effects." Some things become more valuable as more people sign up, and the company that gains an initial advantage may then sweep the field. The classic example is the telephone, where everyone wants to be on the same network.

Again, an interesting idea, and one with clear merit. But again, not new, and not unique to high-tech industries. Timothy Muris, now a professor at George Mason University law school and, as head of the FTC's Bureau of Competition, an architect of the antitrust reforms of the 1980s, notes: "The fact that network effects are everywhere should give us pause about the utility of the concept [for antitrust]. Many products, not just high-tech ones, have the characteristic [that] the benefits of use increase as the number of users grows. Thus, consumers of products that require post-sale service, such as automobiles and appliances, produce network effects from the growth of service outlets when more consumers purchase the product. Coke and Pepsi drinkers benefit from the network of their fellow consumers in that their drinks are widely available in restaurants and from vending machines. Sports fans benefit when they live in an area with enough other fans that teams find it profitable to locate there."

AP / WIDE WORLD PHOTO

Bill Gates: Savvy entrepreneur or computer-age robber baron? The government also seems to think that high market share alone meets the legal definition of monopoly, even if there is only tenuous evidence of power to raise prices.

During the formal presentations at antitrust conferences, the audience listens raptly as phrases such as "path dependence" and "network effects" roll off speakers' tongues. During the receptions the respect drops off, especially because the speakers seem more interested in explaining why the concepts justify an increase in their power than in any real analysis. A typical corridor reaction to the new concepts is "buzzwords and bullshit."

More genteelly, participants note that most of the ongoing antitrust actions lack basic clarity and coherence. The Microsoft litigation started with the idea that the company was illegally tying sales of a Web browser to its operating system. Then, during the trial, the theory shifted to a charge that Microsoft wanted to divide the browser market with Netscape—a pretty silly idea, given the capacity of other companies to make browsers of their own. Now the government seems to be trying to prove that Microsoft is a meanie, which is not

an offense under the Sherman Act. It is for the most part simply hard-edged jockeying over the terms of the partial integrations that are crucial to an efficient software industry.

The government also seems to think that high market share alone meets the legal definition of monopoly, even if there is only tenuous evidence of power to raise prices. Microsoft argues, of course, that it has a high share only because it keeps prices low and that this is what really bothers its competitors. They want Microsoft to be forced to set prices high enough to leave room for them.

The incoherence extends beyond the Microsoft case. The FTC accuses Intel of withholding information about forthcoming chips from companies that sued it for patent infringements. This is a novel extension of antitrust law. The relief sought would force Intel to treat all similarly situated customers alike, which would put the FTC in the middle of endless disputes over the meaning of "similarly situated" and "alike." The case looks like intervention in contract disputes combined with casual meddling in difficult intellectual property issues, plus an unarticulated assumption (also apparent in the Microsoft case) that any company with a large market share should be converted into a new breed of public utility by government fiat.

The DOJ's Visa/MasterCard case is also puzzling. Two separate violations are charged. First is the practice called "duality," whereby the two brands of card are issued by the same banks. The government contends that duality causes both Visa and MasterCard to go easy on introducing new products, such as smart cards, that might damage the other. The second alleged violation is that the Visa/MasterCard banks do not issue AmEx, Discover, or any other card.

These theories are confusing. If Visa and MasterCard are agreeing to slow down innovation, then AmEx, Discover, and other potential competitors should be thanking them for leaving open such a valuable market opportunity. Government intervention would be superfluous, and the last thing a competitor would want is for the government to wake Visa and MasterCard up.

As for the other theory, if duality is illegal, then why is the government trying to make it into quadrality? Or is the government saying that the banks must become the partners of anyone who wants to go into the credit card business? Again, this is a theory that converts any dominant company into a public utility.

All of these matters, and more besides, fan suspicions that government policy is blown by the winds of special pleading and political interest, and that the complex intellectual rationales are simply a new cover for old-fashioned rent seeking.

In a 1961 paper later published in Ayn Rand's *Capitalism: The Unknown Ideal*, Alan Greenspan wrote: "The entire structure of the antitrust statutes in this country is a jumble of economic irrationality and ignorance. It is the product: (a) of a gross misinterpretation of history; and (b) of rather naive, and certainly unrealistic, economic theories." His analysis is still on target. Building a new structure of "buzzwords and bullshit" atop an old one of irrationality and ignorance will not fix the problem.

In the end, the private interests that are so eager to foster this activism will regret it. As more than a few princes of Renaissance Italy could testify, once you bring in the condottieri you have a problem. Before long, you don't own them; they own you. The princes of Silicon Valley will soon have cause to reflect on this lesson of history, as they plead with ignorant but arrogant lawyers for permission to make deals or enter partnerships.

As T.J. Rodgers of Cypress Semiconductor recently warned his fellow tycoons in a *New York Times* op-ed piece: "Winning by politics is antithetical to the free-market competition that underpins Silicon Valley's success. The Justice Department isn't just attacking Microsoft; it's attacking the way Microsoft does business—and, by extension, the way most successful high-technology companies do business."

Rodgers closed by pleading with his colleagues to go back before it's too late. It is possible they will see their own interest and bring their political weight to bear on the side of free markets. If not, then the weary witness to the predictive power of public choice theory, watching the government re-create the good old days of antitrust disasters, will be left with nothing but the consolations of schadenfreude. ◆

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Our Libertarian Friends Are Eccentric

(so you don't appear in the chart below)

THE ABILITY TO DEFINE AN OPPONENT IS UNIVERSALLY RECOGNIZED AS A DECISIVE EDGE IN POLITICS. In America, liberals have come to possess that ability through their pervasive influence in the culture. As a result, the political spectrum runs the gamut from "liberal" to "moderate" to "conservative" and then "right," without the balance of a political "left." No one—not the *New York Times*, nor the *Washington Post*, nor the Republican leaders of the House refers to Minority Whip David Bonior or Black Caucus chair Maxine Waters as leftists. But everyone refers to Newt Gingrich and Trent Lott as men of the right.

IS THERE A LEFT IN AMERICA? Liberals regularly deny it. But fifty-eight Democratic members of the House (including Bonior and Waters) have formed the Congressional Progressive Caucus to work on a left-wing political agenda.

IT IS TIME TO RE-EXAMINE THE LABELS THAT DEFINE AMERICAN POLITICS. It is too late to restore the term "liberal" to neo-conservatives or Goldwater Republicans, where it belongs. But it is not too late to stop calling people who are actually leftists, liberal. That's the way we see it at *FrontPage*.

LEFT

FAR LEFT	LEFT	LEFT LIBERAL	MODERATE LIBERAL
Noam Chomsky	Hillary Clinton	Al Gore	Bill Clinton
Jane Fonda Hayden	Jane Fonda Turner	Eleanor Clift	Jane Fonda Vadim
Rep. Bernie Sanders	Sen. Paul Wellstone	Sen. Ted Kennedy	Sen. Tom Daschle
Catharine MacKinnon	Patricia Ireland	Donna Shalala	Geraldine Ferraro
Z Magazine	*The Nation*	*New York Times*	*The New Republic*
Covert Action	*The Village Voice*	*Washington Post*	*WSJ* Feature Pages
Pacifica Radio	NPR	CNN	ABC, CBS, NBC
Homer's mother	Lisa Simpson	Mayor Quimby	Marge Simpson
Revolutionary Communist Party	Congressional Black Caucus	Democratic Party	Democratic Leadership Council
Greenpeace	Both NEAs	Urban Institute	Brookings Institute
Campus Organizing Committee	MacArthur Genius Awards	Ford Foundation	Carnegie Endowment
Verso	Most University Presses	All NY book publishers	The Free Press
Queer Studies	English Lit.	Political Science	Languages
Order of Ché	National Book Award	Pulitzer Prize	Humanitas Awards
Louis Farrakhan	Toni Morrison	Spike Lee	William Raspberry

RIGHT

MODERATE CONSERVATIVE	CONSERVATIVE	RIGHT	FAR RIGHT
Bob Dole	Ronald Reagan	Pat Buchanan	David Duke
Jane Fonda Fonda	Rush Limbaugh	G. Gordon Liddy	Jared Taylor
President George Bush	Newt Gingrich	Gary Bauer	Lou Sheldon
Liddy Dole	Lynne Cheney	Phyllis Schlafly	Marge Schott
The Economist	*National Review*	*Human Events*	*Middle American News*
Readers' Digest	*WSJ* Editorial page	*Chronicles*	*American Renaissance*
Fox	*Firing Line*	Most talk radio	Radio Free Idaho
Homer Simpson	Mr. Burns	Ned Flanders	Sideshow Bob
American Reform Party	GOP	U.S. Taxpayers Party	Freemen
Hoover Institution	Heritage Foundation	Rockford Institute	John Birch Society
Nixon Library	Bradley Foundation	Von Mises Institute	Liberty Lobby
Yale University Press	Regnery	Spence	Barricade Books
Physics	Business	Football	Eugenics
4H Club Badge	Templeton Prize	Edmund Burke Award	Burning Cross
Shelby Steele	Ward Connerly	Reggie White	Louis Farrakhan

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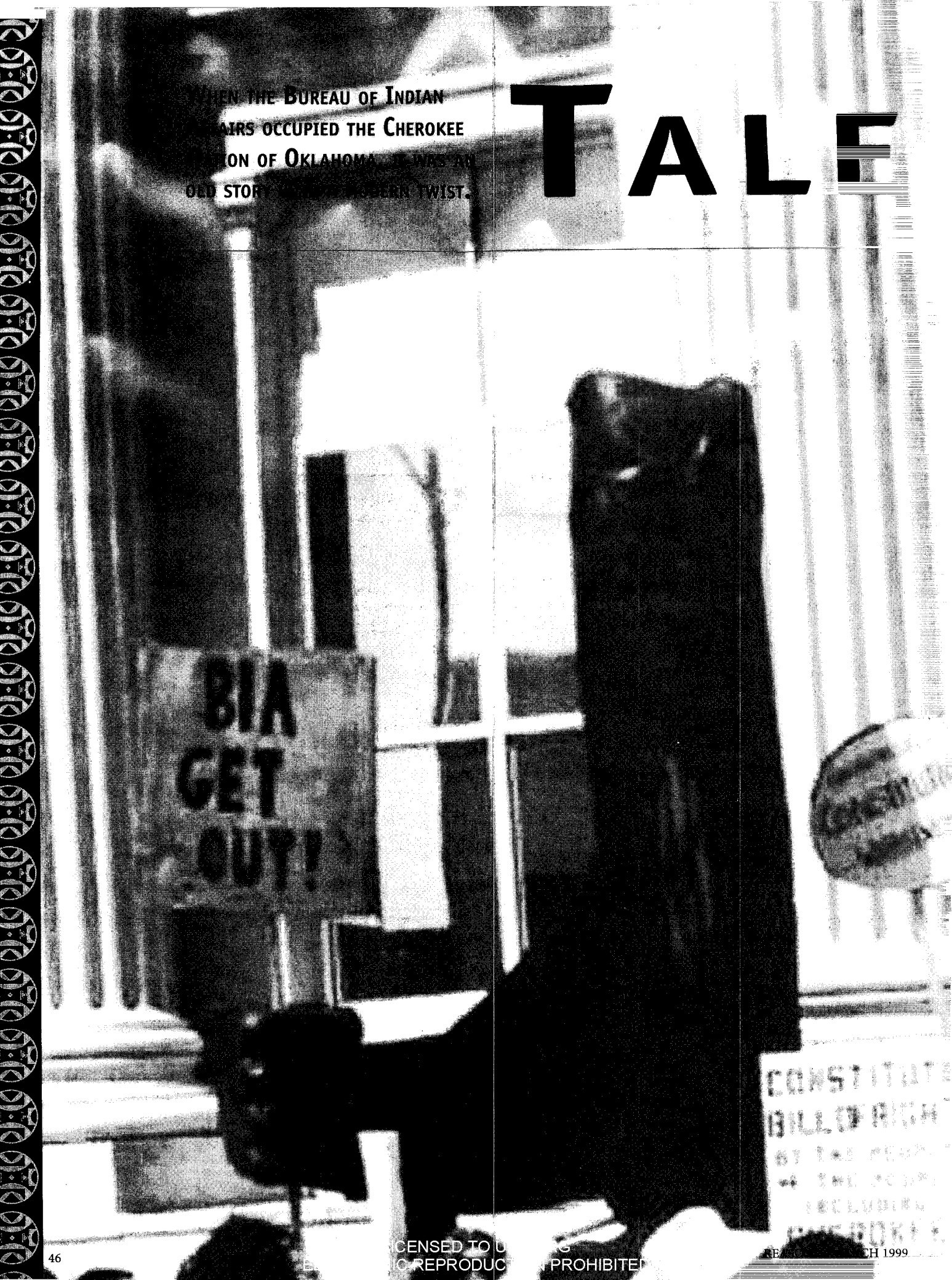
TALE

WHEN THE BUREAU OF INDIAN AIRS OCCUPIED THE CHEROKEE ION OF OKLAHOMA, IT WAS AN OLD STORY WITH A MODERN TWIST.



CENSED TO U G
REPRODUC PROHIBITED

OF TEARS

By Amy H. Sturgis

An embattled chief executive, elected with less than half the vote, who refuses to turn over legal documents to official investigators. Capricious firings of public employees on spurious charges. Accusations of misused funds, dubious dealings with the Democratic National Committee, and subverting state power for personal ends. Surreptitiously taped phone calls. Allegations of abuse of power. Indictments for obstruction of justice. Fears that the standing of the highest office in the land—and faith in government—have been irrevocably damaged.

Though the above is unfolding within the borders of the United

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States, this is not a story about Bill Clinton. It is about recent events in the Cherokee Nation of Oklahoma, the quasi-sovereign entity that covers more than 7,000 square miles in northeastern Oklahoma. In 1997, at the behest of Principal Chief Joe Byrd, who occupies a position analogous to Clinton's, federal Bureau of Indian Affairs agents occupied the CNO's courthouse and disrupted an ongoing investigation into the chief's alleged squandering of tribal monies and trampling of the Cherokee constitution. Two years later, the armed BIA agents are gone, but the controversy continues, playing out in CNO courts and legislative chambers.

Though sharing few specific details with Clinton's scandal, the four-month occupation and the events surrounding it illuminate what might be considered the deeper, structural issues of the Clinton impeachment by providing an object lesson in the necessity of the rule of law and separation of powers. The CNO controversy underscores that real damage is done to the political process when one branch of government refuses to recognize the constitutionally mandated authority of its counterparts.

The occupation also casts a harsh light on the Bureau of Indian Affairs, a bureaucracy that has been called "the worst federal agency" by *U.S. News & World Report* and characterized as "a multifaceted nightmare" by the inspector general of the Department of the Interior. Indeed, since its birth as part of the War Department in 1824, the BIA has evolved from an ill-conceived and brutal weapon used to eradicate and subjugate native Americans to one of the most widely and consistently criticized units of the federal government.

The Cherokees are the second largest tribe in the United States, and about 70,000 members live within the borders of the CNO. With the city of Tahlequah as its capital, the nation is a democracy with three branches of government—the Chiefdom, the Tribal Council, and the Judicial Appeals Tribunal—that perform roughly the same functions as the U.S. executive, legislative, and judicial branches. Like the U.S. federal government, the Cherokee government is designed to maintain a system of checks and balances among branches.

Joe Byrd was elected chief in 1995, in a race overshadowed by the news that popular incumbent Wilma Mankiller had developed lymphoma and would not run for office. In an election in which only 12 percent of eligible voters turned out, Byrd managed to get just 29 percent of the total. The genesis of the BIA occupation dates to 1996, when Byrd ignored requests by the Tribal Council to provide contracts and other financial records regarding public business. Even when the Cherokee Nation Judicial Appeals Tribunal ruled in late 1996 that Byrd had to surrender the papers for the public record, he refused to comply. After giving Byrd several months to obey the law, Tribal Prosecutor A. Diane Blalock asked Chief Justice Ralph Keen to issue a search warrant for Byrd's office on February 24, 1997.

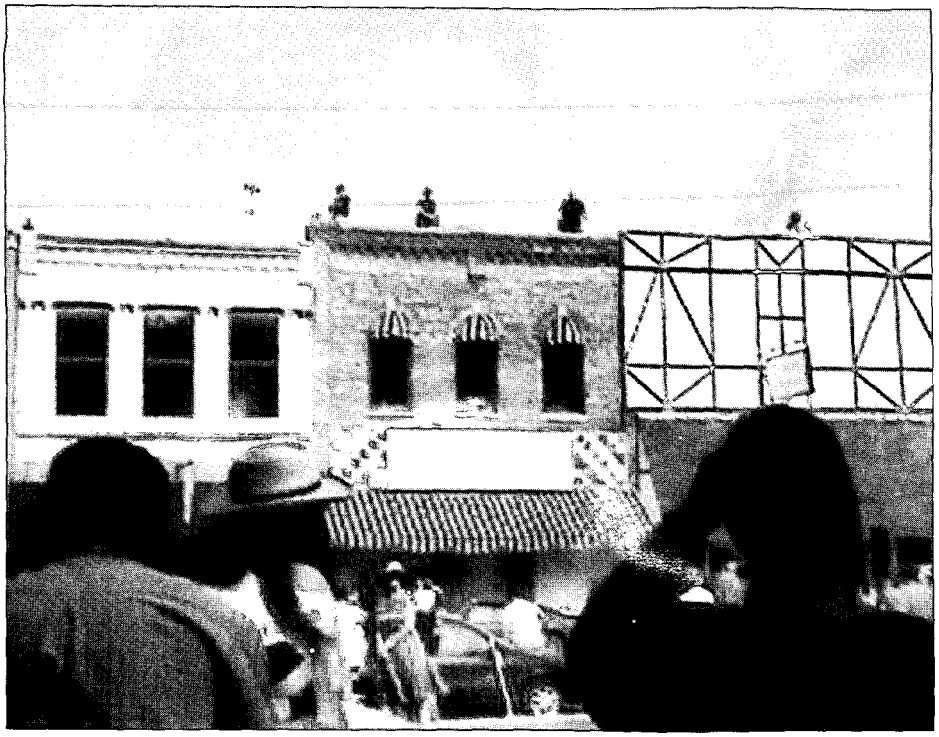
Cherokee marshals served the warrant the next day and copied the financial records in question. Mere hours later, a furious Byrd publicly announced that he had done nothing wrong. He also fired Cherokee Marshal Service Director Pat Ragsdale and a lieutenant marshal, both of whom had helped execute the search. The battle of executive and judicial wills escalated: Cherokee Justice Dwight Birdwell immediately reinstated the two marshals and ordered that anyone interfering with the orders and investigation of the Judicial Appeals Tribunal would be in contempt of court.

Although Article X of the Cherokee constitution required that he turn over the documents, Byrd said there was "no need" for public scrutiny of the papers because, he promised at a press conference, "absolutely no money had been misused." Ignoring the inconvenient fact that the Cherokee courts had given him six months to comply with its request for financial documents, Byrd said, "I think Ralph Keen should have given me the opportunity to handle that situation myself...all he had to do was call me."

As those events were playing out, Cherokee Marshal Service Director Pat Ragsdale was investigating irregularities in the documents gathered from the chief's office. It seemed clear to Ragsdale that Byrd had illegally diverted Cherokee Nation funds, including some from the Bureau of Indian Affairs, beyond the CNO without proper authorization. Ragsdale informed the FBI, since federal money was involved. After reviewing Ragsdale's information, the FBI launched an investigation on March 6, 1997.

After the FBI probe began, however, Bob Powell, a former Oklahoma Bureau of Investigation agent who had been given the nebulous title "tribal inspector" by Byrd, called the marshals' office. According to a tape of that conversation later filed with the Cherokee courts, Powell suggested to five deputies that allegiance to Byrd would allow them to retain their jobs. Powell explained that Byrd had come into the possession of a wiretap tape supposedly exposing a con-

The occupation of the Cherokee Nation of Oklahoma casts a harsh light on the Bureau of Indian Affairs, a bureaucracy that has been called "the worst federal agency" by *U.S. News & World Report* and characterized as "a multifaceted nightmare" by the inspector general of the Department of the Interior.



Watching the Watchers: In August 1997, BIA officers, Chief Byrd's Marshals, and members of the Oklahoma Highway Patrol reacted violently when CNO officers tried to reopen the Cherokee Courthouse.

spiracy to overthrow him. Powell told the marshals that Byrd was planning to give the tape to federal investigators. Such a ploy, said Powell, would simultaneously win the FBI's support and discredit Byrd's opponents in the Cherokee Nation.

It didn't work out that way. The tape, which included conversations among outspoken Cherokee leaders such as Marvin Summerfield, an editor of the *Cherokee Observer* newspaper, Justice Dwight Birdwell, and Tribal Councilwoman Barbara Starr-Scott, revealed criticism of the Byrd administration but no "conspiracy" against him. The FBI's questions ultimately centered not on the content of the tape but on the illegal nature of the wiretap that produced it. Far from winning over the FBI to Byrd's cause, the tape implicated the chief in yet more wrongdoing.

Byrd also drew heat for his use of Bob Powell to intimidate members of the Marshal Service. Members of the Tribal Council questioned Powell's appointment by Byrd, especially since the position of "tribal inspector" was not mentioned in the constitution and had never existed before. Tribal Prosecutor Blalock filed contempt and obstruction of justice charges against Powell for interfering with the marshals' investigation of Byrd. Powell responded with the ingenious though disingenuous argument that he did not have to recognize Cherokee national law—despite the fact that he worked for the chief of the nation—because he was not born an ethnic American Indian.

With his power apparently slipping away, Byrd scrambled for footing. On March 20, 1997, he stated that he would not follow orders from the Cherokee Judicial Appeals Tribunal that he considered to be illegal or unconstitutional. In effect, he had given his warning that he would pick and choose the laws he wished to obey. Such a posture would be disturbing in any elected official. But it struck a particularly harsh note among the Cherokees, who were forcibly relocated to Oklahoma after President Andrew Jackson refused to abide by an 1832 U.S. Supreme Court ruling guaranteeing the Cherokees' right to remain in the southeastern United States. An outraged Chief Justice Ralph Keen warned that Byrd had "set himself up as being above the law."

Byrd responded by firing more marshals involved in investigating him. When the court ordered the marshals reinstated, Byrd placed the officials responsible for restoring the marshals' paychecks on administrative leave. In the meantime, Byrd amassed his own private stock of tribal marshals, sworn in and armed by Byrd to protect him and his interests. With each step, the chief moved closer to making the CNO his own personal police state.

But he could not do it alone; he needed outside help. Indeed, a majority of Cherokee legislative and judicial officials opposed him, and the wheels of the Cherokee justice system continued to turn against him with every new discovery in the ongoing investigation into his tenure as chief. Both Chief Byrd and Deputy Chief Garland Eagle were scheduled to appear before the Judicial Appeals Tribunal to show why they shouldn't be held in contempt for ignoring multiple court orders. Had they failed to attend, the marshals were prepared to arrest Byrd, and an impeachment inquiry would have followed. That legal process was aborted by the BIA's intervention.

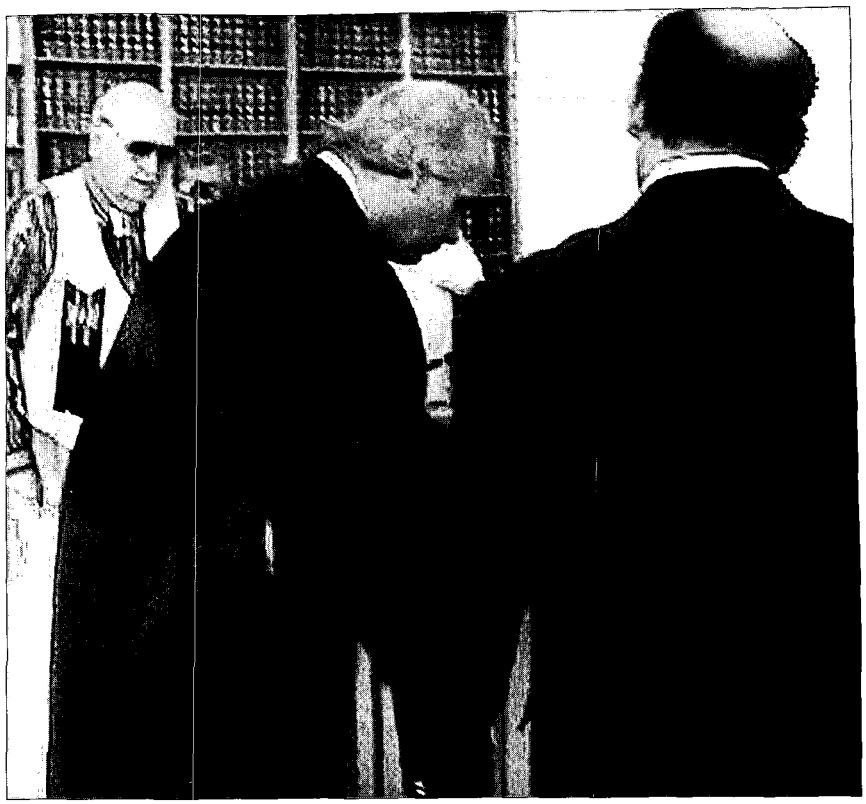
In April, 1997, after a quick trip to Washington, D.C., to meet with federal officials, Byrd engineered the occupation of his own nation by BIA agents. He did this by employing an unprecedented interpretation of the Cherokee constitution. Although Article V, Section 4 of the document unequivocally states that "no business shall be conducted by the Council unless at least two-thirds...of members

PHOTOS: FRANK McCLAIN / CHEROKEE OBSERVER

thereof regularly elected and qualified shall be in attendance," Byrd asserted that this quorum rule did not apply to "special meetings." On April 15, Byrd assembled the eight (out of a total of 15) council members who still supported him. Though short of a quorum—and in flagrant violation of a requirement that 10 days' notice be given prior to special sessions of the council—Byrd's allies voted unanimously to transfer the Cherokees' law enforcement responsibilities to the BIA.

By nightfall, about two dozen Cherokees, including former Principal Chief Wilma Mankiller, had filed a lawsuit in the Cherokee Nation's Court over the dubious council vote. On April 28, when Chad Smith, a Cherokee constitutional attorney and political opponent of Byrd's, explained the chief's legislative machinations to a fully reconvened Tribal Council, Byrd's armed security guards dragged him from the meeting. (Ironically, that scene prompted *The Tulsa World* to editorialize that "federal authorities obviously will have to intervene if the tribe is to be saved from its leaders.")

Still without a quorum, Byrd's supporters on the Tribal Council voted to impeach Chief Justice Keen and Justices Philip Viles and Dwight Birdwell. On June 20, with between four and 16 armed BIA agents assisting (sources vary), Byrd's men took control of the Cherokee Supreme Courthouse. The BIA claimed it "had to ensure the safety of the community and its property."



Cherokee Justice Dwight Birdwell (center): During the occupation, Chief Byrd's employees damaged and defaced the Silver Stars and Purple Heart he had earned during the Vietnam War, an action that prompted protests from tribe members.

Byrd refused to let Marshal Service Director Pat Ragsdale remove personal belongings for the justices, including the Silver Stars and Purple Heart Justice Birdwell had earned during the Vietnam War. A few days later, when Justice Philip Viles and Court Clerk Gina Waits went to the courthouse to continue their duties for the Judicial Appeals Tribunal investigation of Byrd, they were told that they would be arrested if they did not leave the premises at once. As bewildered Cherokees watched, the BIA removed files on the Byrd investigation from the courthouse and kept anti-Byrd tribe members from entering the building. The BIA had effectively halted a legal inquiry, enabling an embattled leader to ascend to the level of despot. As *Muskogee Daily Phoenix* editorial writer Derek Melot later commented, "The BIA...stepped beyond [a] 'neutral' position and...actively support[ed] Byrd's administration."

With their official investigation hampered by the BIA, the occupied Cherokees fought back in surreptitious ways. On June 22, under the guise of a hog fry, more than 700 Cherokees gathered at Whitaker Park in Pryor, Oklahoma, to raise money for the CNO marshals fired by Byrd. (Though reinstated by the court, they had been unpaid for several months.) The Cherokee Elders Council, a nonpartisan group of elder Cherokee activists that carries great advisory weight within the CNO, lodged a protest when it learned that Byrd's employees had damaged and defaced Justice Birdwell's war medals. Cherokees contacted members of the Oklahoma congressional delegation. Republican Sens. Jim Inhofe and Don Nickles both pledged to work against Byrd, whom Nickles labeled "a dictator."

Oblivious to or uninterested in the dubious legal maneuvers behind its authorization, the BIA continued to occupy the courthouse. The unpaid marshals filed a federal lawsuit against the agency, charging it with interfering in Cherokee national affairs. But even as BIA agents were keeping Cherokees from entering their own courthouse, a federal district court judge dismissed the suit, ruling that "any disposition by this court...would adversely impact and interfere with the internal governance of the Cherokee Nation of Oklahoma and its right to exercise sovereign authority."

In August, 1997, the displaced Judicial Appeals Tribu-

nal ordered the fired marshals to reopen the Cherokee Courthouse so that the investigation of Byrd could continue. But when the marshals approached the building, BIA officers and Byrd's new marshals, now joined by members of the Oklahoma Highway Patrol, reacted violently, injuring six people. A week later, 25 Cherokees filed suits in federal court against members of the BIA and the Oklahoma Highway Patrol, charging them with illegally barring tribal members from the courthouse.

Just when the situation seemed bleakest—and most likely to erupt into serious factional violence—a nonpartisan report on Byrd ordered by the Tribal Council back in 1996 appeared. Released in late August 1997, the Massad Report (named after its principal author, Anthony M. Massad), was the work of three non-Indian attorneys who had no ties to the CNO but were nonetheless conversant with native American political structures in Oklahoma.

In a thorough, generally evenhanded analysis of the situation, the report condemned Byrd's behavior, focusing especially on "the shocking revelations" regarding obstruction of justice and lack of disclosure of financial records. "The principal chief should ensure his assistants are sensitive to his constitutional duty and personal commitment to perform his duties in strict compliance with applicable laws, and that they understand this requires change in their patterns of work," the report said. "The principal chief should expect and encourage criticism as well as support from persons in the other two branches [of government]." The report also called for reinstatement of the "fired" marshals, a reopening of the "closed" courthouse, and a return of the "impeached" justices.

The highly visible—and highly credible—report shamed both Byrd's tribal allies and the BIA, which finally withdrew from the CNO. At last, the law and will of the Cherokee people was reasserted.

But the effect of the BIA's intervention on Byrd's behalf has lingered long after the last armed agents left the area and the immediate crisis passed. As one Cherokee has commented, "[It] looks like we will not enter the 21st century with our self-governance, self-sufficiency and sovereignty intact....In fact, we...have reverted back to the turn of the century."

Indeed, it will be some time before the CNO fully resolves the issues raised by recent events. Byrd continues to serve out his four-year term as principal chief, despite a late 1998 poll that put his approval rating in the single digits. If the BIA occupation he engineered failed to consolidate his power, it did effectively keep him from being impeached. With the next election for principal chief this May, Byrd's critics have decided to wait out his tenure in office rather than begin impeachment proceedings against him.

Key tribal records and files, including those removed by the BIA, are still missing, even as new leads appear in the ongoing investigation of Byrd's alleged misuse of power. Auditors from the U.S. Department of Interior uncovered, in *The Tulsa World*'s phrase, concerted efforts "to woo... federal officials using federal funds," with the goal of creating a personal political empire. Allegations against Byrd now include charges that he made illegal political contributions by "lending" a full-time, paid Cherokee tribal employee to the Democratic National Committee for months at a time, and that he diverted CNO funds to D.C.-based attorneys to secure favors for himself, family members, and supporters. At one point in late 1998, Byrd faced 11 active cases and four pending arrest warrants. In U.S. federal courts, he faces two criminal charges of diversion of federal funds.

However those cases ultimately play out, the experience of having a national leader refuse to comply with legitimate requests from other branches of government has seriously damaged the CNO's political process. The occupation effectively postponed a constitutional convention required by a 1995 law (the Cherokees periodically review their constitution). The convention, tentatively scheduled for 1998, did not take place due to the uproar. Even interest in the upcoming elections seems muted by the affair. As Robert A. Fairbanks, president of the Oklahoma-based native American College Preparatory Center, has observed, "The Cherokees are now wondering how to insure that elected officials henceforth conduct tribal affairs in accordance with the Cherokee National Constitution."

The partisan intervention of federal agents and an alleged relationship between the chief and the Democratic Party have also reinforced fears among the Cherokees that the BIA, far from helping to impartially adjudicate tribal problems, is either avaricious, incompetent, or some combination of the two. Accusations that the BIA is a "mercenary agency" are regularly voiced in public forums. Judicial Appeals Tribunal Justice Philip Viles has said that the agency's intervention was based on a nearly complete "lack of knowl-

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edge of facts." According to an October 1998 poll of the CNO conducted by Ohio State University researchers, the BIA has a 5 percent approval rating and 90 percent disapproval rating among tribe members.

While the occupation no doubt intensified such feelings, it's worth pointing out that the BIA has inspired similar hostility among native Americans—and non-Indian critics—for most of its 175 years. The agency has long been criticized for running roughshod over the very people it is supposed to serve. In a 1953 *Yale Law Journal* article, for instance, Felix S. Cohen, the author of the standard *Handbook of Federal Indian Law* that is still used today, compared the BIA to an extortion racket and detailed how agency officials threatened American Indian communities with losing their oil and natural gas rights, hospitals, and schools if they did not support the agency and its agenda. More recently, in *Stealing From Indians* (1994), David L. Henry, a certified public accountant and former BIA employee, exposed multiple cases of agency theft, embezzlement, and fraud against a number of American Indian nations by BIA agents. Tribal losses, according to Henry, amounted to billions of dollars.

Principal Chief Joe Byrd (left) and Deputy Chief Garland Eagle: They were scheduled to appear before the Judicial Appeals Tribunal, but the BIA occupation circumvented that legal process.

Such exposés have been matched by decades of official calls for reform. In 1948, the Hoover Commission, charged with evaluating the organization of the federal executive branch, suggested dismantling the BIA in favor of a more decentralized, state-based system. The "Declaration of Indian Purpose," the product of a meeting of more than 450 tribal leaders at the 1961 Voice of the American Indian Conference, called for an end to government "charity" and bureaucratic paternalism altogether in favor of complete self-determination. The 1966 *Presidential Task Force Report on the American Indian* advised a fundamental overhaul of the BIA, as did the 1969 report known as the Josephy Study. The 1975 Indian Self-Determination Act, which granted all tribes the right to manage programs and services formerly administered by the BIA, even apparently abolished the agency's raison d'être.

Somehow, though, 150 years after the removal era, the BIA manages to get along quite nicely. Its 1998 budget was $1.73 billion, up from $1.6 billion the previous year. As suggested by the lack of a federal investigation or reprimand after the CNO occupation, the agency continues to escape any real scrutiny and accountability. Questions about the BIA extend far beyond its police power: The agency has done little to address the new urban and technological realities of native American life. For instance, while Cherokees in Oklahoma and beyond have embraced Web-based entrepreneurship and designed software programs capable of transcribing traditional native languages, the BIA still focuses on early 20th-century concerns such as agricultural issues.

Indeed, even as the CNO struggles to move beyond the crisis in governing of the past few years, the status quo seems to be holding at the agency that played such a pivotal role. In late 1997, Kevin Gover, an attorney specializing in federal Indian law and a member of the Pawnee tribe, replaced Ada Deer as BIA director. But judging from Gover's address to the 55th Annual National Congress of American Indians last October, such change is cosmetic at best. In his speech, Gover did not talk about policing internal corruption or standardizing BIA procedures. Instead, he said his goal for the agency was "to rediscover and reinvigorate the Warrior spirit in each of us."

Beyond invoking bland platitudes, Gover criticized those who protested the BIA's legacy of capricious actions by warning that "adversaries in Congress" could use "the bureau's shortcomings as an excuse for the refusal to appropriate needed dollars." Gover appears to view the BIA's "shortcomings" merely as political threats to his agency's turf and budget. Such an attitude is all too consistent with the BIA's history and offers little reason for native Americans—and U.S. taxpayers—to cheer. In this country, we are often accused of ignoring the past and refusing to learn from it. Recent events in northeastern Oklahoma suggest that there is substantial truth to such a charge. ◆

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Eliminate, Don't Reform the IRS

by Sheldon Richman

Yet again a taxpayer "bill of rights" has been enacted into law. And so, after all the recent revelations of Internal Revenue Service abuse, we can all now be confident the tax collector will respect the rights and dignity of every American.

Right. And pigs have started flying.

We've been here before. This is the third so-called bill of rights for taxpayers passed in recent years. Doesn't that strike you as strange? Do you think they got it right this time?

At first glance, the law might look like it will afford some protection for taxpayers. It will create a nine-member board to oversee operations, six of whose members will be from the private sector. The law will also shift the burden of proof from the taxpayer to the IRS in court cases. Currently, the taxpayer is guilty until he proves himself innocent. Other provisions will let citizens harmed by IRS negligence sue for damages and relieve taxpayers of liabilities of former spouses. Homes can no longer be seized without a court order. Some penalties will be reduced and IRS deadlines tightened.

But in the world of legislation, especially IRS "reform" legislation, things, as W.S. Gilbert wrote, "are seldom what they seem."

The oversight board and the shift in the burden of proof "are said to be the silver bullets that will end IRS abuse," writes Daniel J. Pilla, one of the great IRS watchers. "They are more likely to be blank cartridges."

Pilla writes that the oversight board is not what we have been led to believe it is. To judge by the news summaries, you'd think that this board of overseers will be able to come to the rescue of battered citizens. But that's not the case. The new body will be involved in planning for the future and in overseeing the IRS budget and commissioner. "In other words," writes Pilla, "the Board will function as a forum for thinking about the overall direction of the IRS." It won't have the power to prevent agents from treating taxpayers like child molesters. Pilla notes that the board is specifically denied authority over the agency's law-enforcement apparatus. Don't expect it to rectify the abuses associated with audits and other activities designed to wring more revenue of Americans. Pilla says the board could not avert the tyrannical conduct citizens reported at Senate Finance Committee hearings.

And what of the burden of proof? A clue to the bogus nature of the "reform" lies in the bill's command that Americans keep records and cooperate with the IRS during investigations. In other words, the IRS may have the nominal burden of proof, but you must furnish the records it will use against you. But there's even less to this provision than meets the eye. The burden is shifted only in court proceedings. "The problem," Pilla writes, "is that 97 percent of everything the IRS does involves no 'court proceeding.'" Most of the problems that citizens have with the IRS occur outside of the court. They involve, Pilla says, "its powers of lien, levy, and seizure." In other words, the shift in the burden will make no difference to most taxpayers who are hounded by the IRS.

Even in court, there is hardly real relief forthcoming. To shift the burden to the government, a taxpayer will have to make a "reasonable" case that the IRS position is defective. In otherwords, the citizen has the burden of showing that the burden should be shifted! Some protection.

Bills of rights have never restrained the IRS. In a sense, it's not the agency's fault. The fault lies with Congress, which has charged the IRS with extracting more than a trillion dollars from the hide of the American people. There's no way to do that while being nice. No amount of legislation will make the agency a "service provider." Taxpayers cannot be its customers.

There is one way — and only one way — to respect taxpayer rights: Repeal all income taxes, abolish the IRS, and repeal the outrageous spending that requires them.

Sheldon Richman is senior fellow at The Future of Freedom Foundation in Fairfax, Va., author of its forthcoming book *Your Money or Your Life: Why We Must Abolish the Income Tax*, and editor of *The Freeman* magazine.

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Seizure Disorder

Seattle's "drug nuisance abatement" program is a menace to law-abiding property owners.

By Michelle Malkin

Etta Mae Franklin is 78 years old. The seventh and eighth decades of her life have not been easy. Her husband, a seaman and sandblaster, was killed on the job. One of her 10 children died of cancer. And three years ago, the city of Seattle came close to taking away her home.

The city had targeted Franklin's modest residence, one block from Garfield High School in a troubled Central District neighborhood, for "abatement," through which the government seizes private property in the name of public safety. Franklin herself was never accused of wrongdoing, but she had a delinquent, live-at-home son suspected of dealing drugs. On January 28, 1995, the Seattle Police Department obtained a search warrant and raided Franklin's home. They found no drugs and made no arrests. On October 13, 1995, the cops got a second search warrant and again made no arrests.

According to the police report, Etta Mae Franklin told the officers "that she did not want to lose her house." She agreed to evict her 41-year-old son, Edmund McNeil, who allegedly had sold drugs to a police informant. But the city proceeded with abatement anyway, and as it closed in on Franklin's home, her lawyer, James Kempton, saw the alarming implications:

"The city seems to wish to penalize Etta Mae Franklin for failing to stop an alleged activity which she is unaware of and over which she would have no control if she were aware. If the Court were to let the City have its way, we could easily resolve the entire drug problem in the Central Area, by telling every homeowner that drug activity is illegal, then abat[ing] their homes if accusations are made by neighbors of frequent pedestrian traffic, etc.

"This is obviously an unconstitutional overreaching by the City in an attempt to deter an alleged drug dealer without arresting him. While the City's petition and supporting affidavits create a lot of suspicion, the obvious answer would be to make an arrest and charge accordingly....Mrs. Franklin has done everything within her power to see that her home is maintained in a lawful manner."

Franklin's 730-pound son was eventually arrested for drug activity, but no jail would accept him, court records show, "because of his girth." In the meantime, Kempton won a court decision to set aside the abatement of the innocent mother's home. But it came too late to spare Etta Mae Franklin the grief and financial hardship that accompanied her three-year nightmare. Adding insult to outrage, the city billed Franklin for the cost of filing the civil action. Reflecting on the ordeal, Kempton says, "It was just cruel."

Etta Mae Franklin is not the sort of person legislators had in mind when they created the law enforcement tool known as drug nuisance abatement in 1988. At the height of public concern about crack cocaine, the Washington legislature approved a law enabling local governments and private citizens to go to court to condemn property tied to drug activity. During the legislative debate, then–state Sen. Janice Niemi (D-Seattle) identified who the primary targets should be: "Of course, these are crack houses we are talking about, particularly in the city of Seattle."

A model of the law's intended application was the February 1990 closure of a crack house operated by a Cuban gang in Tacoma's Hilltop neighborhood, which resulted in the arrest of 28 members of the infamous Marielitos crime ring. The King County Prosecutor's Office, which handles criminal cases in the unincorporated area outside of Seattle, has used the law sparingly. Almost all of the county's drug nuisance abatements since 1988 have resulted in arrests of property owners involved directly in drug-related activities. One case involved a home located north of Seattle that was under investigation for operating a drug ring and a U.S. Postal Service mail scam; the owners were arrested for multiple heroin sales. Another involved a methamphetamine lab run out of a Kent-area home and investigated by the U.S. Drug Enforcement Administration.

But critics charge that Seattle City Attorney Mark Sidran has applied the abatement law unfairly and inappropriately. The U.S. Department of Justice is reviewing a discrimination complaint filed against the city last summer by the National Black Chamber of Commerce. The main focus of the complaint is minority-owned businesses targeted for closure. But once investigators start digging, it will be hard to ignore the scores of other property owners whose rights may have been trampled in Sidran's war on drugs.

An examination of the city attorney's files raises troubling questions about Sidran's energetic and unscrutinized application of the law—and the willingness of the state Liquor Control Board and the judicial system to support him. I reviewed 28 drug abatement cases that were filed by the city during Sidran's tenure, from 1990 to the present. (Of about 100 total cases brought by Sidran's office, roughly two-thirds were inaccessible because of ongoing investigations or for administrative reasons. Of the remaining 36, eight are archived and could not be obtained in time for this article. I reviewed the remaining 28 at the City Attorney's Office or through the King County Courthouse.)

The files document several instances of apparent overreaching and misallocation of police resources. Sidran's targets have included:

- Rose Ervin, a grandmother described in police records as "an amputee confined to a wheelchair and over eighty years of age." Like Etta Mae Franklin, Ervin was never suspected of having engaged in or condoned illegal drug activity in her home.
- Mae Fosha, another elderly grandmother who had suffered a stroke and a heart attack and undergone two bypass surgeries. She was not accused of drug crimes and went out of her way to meet with police in the East Precinct to help solve a neighborhood crime problem that

did not involve her or anyone living in her house.

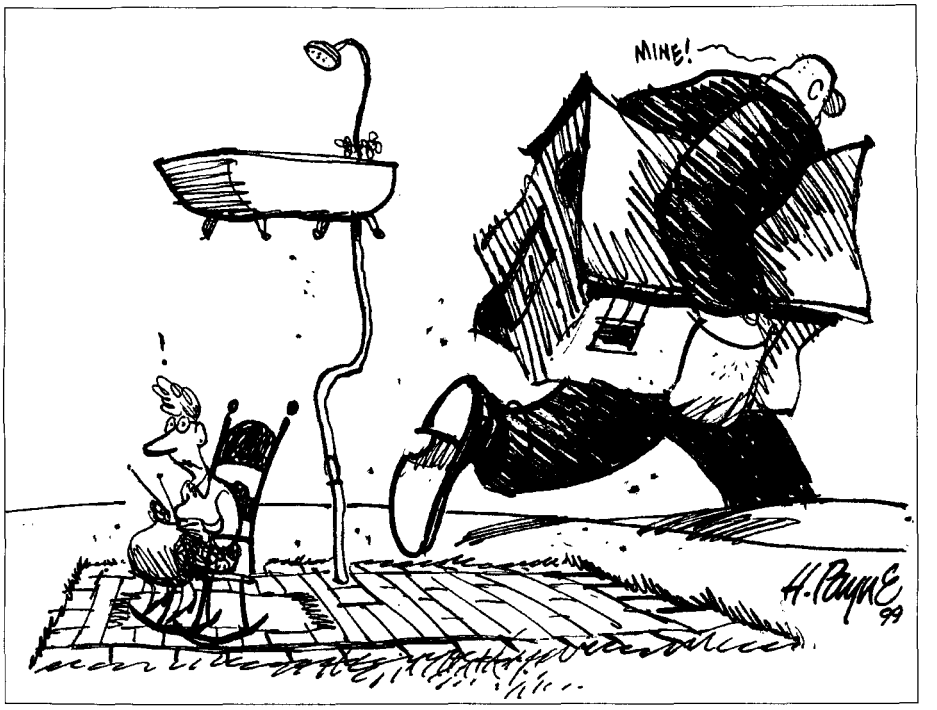
■ Preston Scott Sr., who contacted the Seattle Police Department and "was eager to try and eliminate drug activity" at a home he rented to his grandson. The grandson, Cornell Callendret, was suspected of being a dealer but was never arrested.

■ Westerton Currie, an unemployed 71-year-old Seattle resident with a third-grade education, who admitted he had a drug problem and said he needed help. In 1991, Currie's attorney, Jean Schiedler, raised compelling questions about the apparent lack of due process available to her client under the drug abatement statute:

"The City has provided simple affidavits of police officers, declarations reputedly from people within Mr. Currie's neighborhood and police reports inadmissible as hearsay to show the truth of the matters contained therein. Mr. Currie has no meaningful opportunity to challenge or respond to the allegations raised...no opportunity to cross-examine witnesses by which he would be deprived of his property. The court has no opportunity to independently review and assess the credibility of the witnesses or the strength of the evidence."

Similar complaints have been heard from owners of several small businesses targeted for closure. The most prominent local business entangled in Sidran's drug abatement web is Oscar's II, a two-decade-old family tavern in Seattle's Central District owned by Oscar and Barbara McCoy. The McCoys are challenging Sidran's action as a violation of their civil and property rights. Their case, the state's first to challenge the constitutionality of drug abatement, is before the state Court of Appeals. Oral arguments were expected to begin in February.

Sidran argues that Oscar's II is a menace to the community. Yet only one citizen came to a July legislative hearing on reform of the drug abatement law to vouch for Sidran's claims, and she lived in a Belltown condo, miles away from the bar. After a 10-month undercover investigation and 11 alleged drug buys, no arrests were made and no criminal charges were brought against the McCoys or any of their employees.



HENRY PAYNE

Ernest Heller, a senior administrative law judge who presided over a state Liquor Control Board hearing to determine whether the McCoys' liquor license should be revoked, concluded that he could not make findings based on the hearsay statements of confidential informants involved in the alleged drug buys. To do so, Heller wrote, "would deny the licensee an opportunity for confrontation"—a fundamental due process concern voiced six years earlier by Westerton Currie's lawyer.

Heller found the testimony of a key confidential informant known as "Bright Eyes" particularly disturbing. The anonymous woman participated in the Seattle Police Department's sting operation on six different occasions during 1997. She testified that she had obtained drugs from a customer, who claimed in turn that she had received them from a waitress at Oscar's named Colleen. But the only waitress with that name employed by the McCoys was neither on duty nor on the premises on the day Bright Eyes claimed to have bought drugs at Oscar's. Heller dismissed her testimony as "not credible" and said that "taken as whole, she was not presented as a credible person." Nor a particularly competent one. At one point, when asked whether she had an independent recollection of an alleged drug buy, Bright Eyes replied: "I don't have a photostatic record of memory, sir."

"It is troubling," Heller concluded, "that hundreds of thousands of dollars were paid out to drug dealers leading to no enforcement activity." Nevertheless, the Liquor Control Board, goaded by the city of Seattle to revoke Oscar's license, quickly threw out Heller's strongly worded ruling in favor of the McCoys and instead took Bright Eyes at her word.

Another targeted business was Uncle John's Tavern in the Rainier Valley neighborhood of Seattle. Owner John Clayton is a 40-year resident of Seattle, an Army veteran, and a retired employee of the U.S. Public Health Service. He had a spotless record of compliance with liquor laws until the city of Seattle filed an objection to his license renewal. He had never been charged with a drug violation and had cooperated with police to fight crime. Despite a petition of support signed by more than 100 neighbors and patrons of his tavern, the city launched a drug abatement action against Clayton in 1996.

King County Superior Court Judge Joseph Wesley, who also presided over the McCoys' abatement hearing, acknowledged the difficulty of balancing the "community's interest in combating drug traffic and an individual's right to operate his business free of government interference." The city decided to defer its case because alleged drug activity had ceased at Uncle John's. (Curiously, the cessation of alleged

drug activity at Oscar's II has not resulted in a similar decision.) But by the time the city finally relented, Uncle John's had been strangled slowly to death. Clayton was forced to sell the business to defray his legal costs.

A courtroom exchange between Judge Wesley and Clayton's lawyer, Howard Pruzan, highlights the unfair expectations created by the abatement law:

Pruzan: "Honest to goodness, we want to help eradicate drug activity. Seriously, what can Mr. Clayton do? Supposing that he believes that someone in his parking lot is doing something suspicious. He certainly cannot make a citizen's arrest. He can call the police department. I am told by his security person that they have done that and that the police have not responded for three or four hours at a minimum. What in the world is he to do about this, Your Honor?"

Wesley: "It may well be that one can't run that business in that location. Maybe that's the answer....Pig farms make a good living for people, but in our community we don't let there be a pig farm."

Pig farms may be illegal in Seattle, but licensed, taxpaying, family-owned taverns such as Uncle John's and Oscar's II are not. These businesses have employed dozens of people, served hundreds of loyal customers, contributed to cultural diversity, generated property tax revenue, put kids through college, and provided retirement nest eggs. Clayton's entire savings were invested in his tavern. Now the 64-year-old former businessman works as a janitor at the Kingdome to make ends meet.

Attorney Richard Shepard of the Tacoma-based Northwest Legal Foundation, a property rights advocacy group, wonders "if the Seattle Parks Department was unable to control drug trafficking in Freeway Park, whether the city would sue the Parks Department for abatement." No such cases against publicly owned drug hotspots such as Freeway Park, Cowen Park, the Kingdome, or the King County Courthouse have been filed by Sidran to date.

Etta Mae Franklin, Rose Ervin, Mae Fosha, Preston Scott Sr., Westerton Currie, Dean Falls, Oscar McCoy, and John Clayton have two things in common: They were all targets of drug abatement by City Attorney Mark Sidran, and they all happen to be black. Sidran emphasizes that his aggressive abatement campaign "is not about race" but about reducing crime. Yet the Seattle Police Department reported in August that the number of gang-related drug arrests in the city skyrocketed from 168 in 1992 to 397 in 1997.

Sidran dismisses community concerns about racism as "too fantastic." Yet of the 28 cases I was able to review through public records requests or through the King County Courthouse, all but five involved black homeowners or black small-business owners. Only one out of the 28 involved a white property owner. In other words, Sidran lodged 96 percent of these drug abatement cases against minorities in a city where minorities make up roughly 25 percent of the population.

Moreover, of the cases I reviewed and mapped out, nearly 90 percent were located in the Central District and Rainier Valley areas. The city might reasonably argue that drug abatement cases are concentrated in these neighborhoods, where most of Seattle's black residents live, because that is where most drug crimes occur. The data that would be needed to back up that explanation—drug arrest figures broken down by neighborhood or precinct—are not available from the Seattle Police Department.

Does Seattle engage in deliberate racial discrimination, or is something more subtle at work? Only one case out of the 28 studied involved a white property owner.

But a comparison of other law enforcement statistics for 1997 shows that black neighborhoods do not account for a disproportionate share of the city's other major crimes. In fact, the predominantly white West Precinct reported twice as many thefts as the predominantly black East Precinct and substantially more robberies, assaults, and auto thefts. All are crimes associated with drug activity. Given these data, it's reasonable to expect a far more even distribution of drug abatements between the two precincts than the pattern that seems to be emerging. Questioned on this point, the Seattle Police Department does not have an explanation for the discrepancy.

Does Seattle engage in deliberate racial discrimination, or is something more subtle at work? Some of the minority abatement targets are in areas slated for urban redevelopment. Critics also note that property owners in Seattle's black, working-class neighborhoods have fewer resources with which to contest abatement actions. Or perhaps it's a case of looking for the keys next to the lamppost: A history of conspicuous drug activity invites heightened scrutiny and enforcement in certain neighborhoods, even though the drug problem has spread beyond those areas.

Adding to the racial tension are animal analogies like the "pig farm" comparison used by Judge Wesley. In a recent deposition involving the closure of another nightclub that catered to black patrons, Sidran said: "When you're confronting a recurring, repetitive, long-standing problem, at some point...you begin to think about draining the swamp instead of constantly chasing the alligators down one by one." He repeated that reasoning in the city's appeals brief in the Oscar's II case, complaining that the continued operation of the McCoys' business would force "the police to pursue the problem one suspect at a time."

Lindsay Thompson, a Seattle attorney who handled 300 drug felony cases as a deputy prosecutor for Cowlitz County, is troubled by the city's use of the drug abatement statute against law-abiding people like the McCoys: "It sends an oppressive message to the community when you work with citizens one day and then blame them for crime they can't possibly control on their own. That should make anybody rise up in outrage." Thompson—who lives in Seattle's Central District, just a few blocks from Oscar's II—adds, "Sidran's swamp analogy is faulty. The last thing we as servants in law enforcement should be doing is destroying the village to save it." ◆

Michelle Malkin (malkin1@ix.netcom.com) is an editorial writer and columnist for the Seattle Times.

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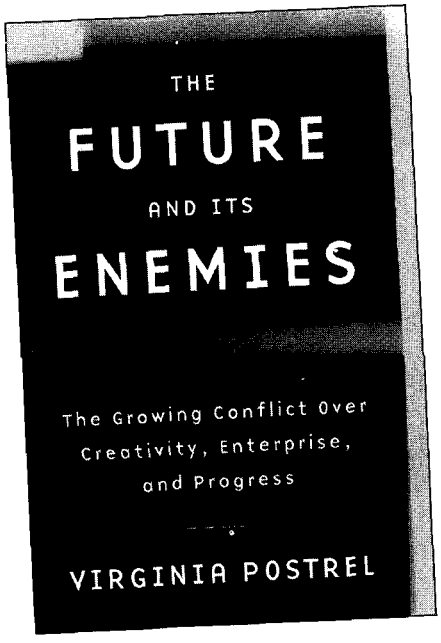

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Lost in the Wash

"Know your customer" rules send privacy to the cleaners.

By Walter Olson

Late last year the federal government proposed new rules requiring banks to adopt "Know Your Customer" programs. Such programs are intended "to deter and detect financial crimes, such as money laundering, tax evasion, and fraud," according to the Federal Deposit Insurance Corporation, one of the agencies involved.

If the rules go into effect as planned on April 1, 2000, banks will be required to monitor and investigate "abnormal" activity in their customers' accounts. Unless a satisfactory explanation is forthcoming, they will then have to report such activity to a centralized government database of "suspicious-activities reports" jointly maintained by the Internal Revenue Service and other agencies. Federal and state law enforcers have instant electronic access to these reports and frequently use them as the basis for launching investigations.

To determine what counts as "abnormal," each bank will need to establish profiles of "normal and expected" activity for its depositors' accounts. To assemble such profiles, bankers will probably gather information about depositors' occupations and lines of business, their typical patterns of deposits and withdrawals, the nature of any overseas financial ties they maintain, and what their relationship may be to other persons who use the same account. Customers who decline to answer questions or provide documentation may be refused new accounts or required to close old ones. Irregular cash deposits—ranging from tip income to holiday bonuses and inheritances—would be especially likely to elicit questions from bank officers.

Much to the apparent surprise of federal officials, the proposed regulations were met almost at once with a storm of public outrage. "Don't turn banks into Big Brother," editorialized the *St. Petersburg Times*. The *Sacramento Bee* blasted the proposal as "a potentially grave invasion of the privacy of every bank customer in the country....Know Your Customer means Snoop on Your Customer." Thousands of Internet-fueled complaints (blamed by an FDIC official on "anti-government groups") poured in, some from smaller banks that objected to the rules' anticipated burdens, but most from ordinary consumers and citizens. (The comment period on the regulations ends March 8; the relevant addresses are comments@fdic.gov, public.info@ots.treas.gov, and regs.comments@occ.treas.gov.)

Federal bank regulators complain that the protests are quite unfair. After all, it's not as if these regulations appeared out of the blue: They're a logical next step in an ongoing campaign dating back more than a decade, since "money laundering" was criminalized in 1986. Informally, the trade press has reported, examiners have been instructing banks for years to set up know-your-customer policies, and by now most banks are collecting information on their customers' transaction patterns and, increasingly, combining such information into "profiles" of account activity. "No one seems to understand," griped Federal Reserve spokesman Richard Small, "that the information that we want as part of this know-your-customer proposal is not new and has been collected for years." Which falls into the category of Reassurances That Leave Us More Alarmed Than Ever.

Federal officials boast of a growing partnership between the banking industry and law enforcement. The partnership is not entirely voluntary: Banks that do not cooperate risk being fined or having their charters revoked.

It's easy to forget what a new crime money laundering is, or how rapidly it has expanded in its short history on the books. Originally referring to highly complex financial ploys devised to move criminally obtained (usually drug) money from one form and place to another while disguising its provenance, it has become a concept under which all sorts of professionals, from real estate agents and insurance brokers to yacht salesmen and interior decorators, can be menaced with 20-year prison sentences if they do business with big spenders who acquired their down payments by illegal means. Prosecutors need only allege that the recipients knew—or maybe just should have known (a convenient doctrine of "willful blindness" helps out here)—that the money was dirty.

At the same time, the crusade against laundering has served as an excuse for criminalizing a wide range of conduct, such as cash transactions over $10,000 not reported to the government, in which none of the participants would in other respects be deemed criminal and no one is trying to "launder" anything. Somewhere along the way, tax authorities discovered that anti-laundering rules were a highly useful weapon in the campaign against their age-old enemy, the economy's unrecorded cash sector.

Nowadays, federal officials boast of a "growing partnership between the banking industry and law enforcement." Not that the partnership is entirely voluntary: As White House drug czar Barry McCaffrey warned in a November 1997 keynote address to the American Bankers Association, banks that do not cooperate risk "being fined" or "having their charters revoked." Perhaps the key step came three years ago, when federal law began requiring banks to report "suspicious" transactions, defined as those that have no "business or apparent lawful purpose" or are "not the sort of transaction in which the

particular customer would normally be expected to engage, [when] the institution [can learn of] no reasonable explanation for the transaction."

The 1996 law instructs banks to file "suspicious activity reports" in such cases, while forbidding them to tell their customers that they have filed such reports. By late 1997 the resulting database was getting 4,600 queries a month from state and local authorities. (It also shares information with foreign law enforcement authorities.) The backup material ("supporting documentation") on a suspicious activity report is held by the bank but is considered U.S. government property, which means the bank must deliver it on the demand of an agency, with no need for subpoenas or those pesky warrants.

Until now, while obliged to report any suspicious activities that come to their notice, banks have not been required to go searching for such activities. That's where the new rules come in. Which leaves a lot riding on the question of what counts as a "suspicious" transaction. According to McCaffrey, "telltale signs" include "multiple bank accounts opened by more than one individual using the same address" as well as "cash deposits in amounts that far exceed what could normally be expected from a person with the type of job description found on the signature card." Another telltale sign is "the use of a foreign address to open an account, which is subsequently changed to a U.S. address soon after the account is opened"—although that sequence might typify the arrival home of a repatriating corporate transferee, artist, or student. McCaffrey also says banks should be suspicious of an account "in which a cellular phone...is given as the reference telephone number on the account opening forms," advice that might alarm the small but growing cadre of consumers who have dispensed with landline telephone accounts in favor of portable phones.

Other expert and official sources suggest that a customer's concern for privacy all by itself—as distinct from, say, a nervous demeanor—should be taken as a mark of suspiciousness. According to the February 1996 issue of *Money Laundering Alerts*, "A customer should be monitored if he or she...is unwilling to provide personal background data," shows reluctance to proceed with a transaction after learning that it is considered suspicious, or wires a lot of money to "tax havens such as... Hong Kong."

As a concept, suspiciousness can be bafflingly inclusive. "Unusual use of night deposit boxes or safe deposit boxes" is to be flagged, according to the Alert, but so is the action of the customer who "opens a safety deposit box, uses it once or twice, and never returns." And what's good news for bankers—"paying off problem loans unexpectedly"—turns out to be bad news for borrowers, when the bank's compliance officer ungratefully reports them to the feds. Other indicia of suspiciousness could as easily signal eccentricity or inattentiveness: keeping accounts with several banks in the same city; "mak[ing] cash deposits without first counting the cash"; "abnormal practices, such as bypassing the chance to obtain higher interest rates on large balances"; and that favorite habit of day traders, "buying and sell-

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THE PURSUIT OF CERTAINTY
David Hume, Jeremy Bentham, John Stuart Mill, Beatrice Webb
By Shirley Robin Letwin

By examining the thought of four seminal thinkers, Shirley Robin Letwin in ***The Pursuit of Certainty*** provides a brilliant record of the gradual change in the English-speaking peoples' understanding of "what sort of activity politics is." As Letwin writes, "the distinctive political issue since the eighteenth century has been whether government should do more or less." Nor, as many historians argue, did this issue arise because of the Industrial Revolution or "new social conditions [that] aggravated the problem of poverty" but, Letwin believes, because of the "profoundly personal reflection" of major thinkers, including Hume, Bentham, Mill, and Webb. David Hume, for example, believed that to "reach for perfection, to seek an ideal, is noble, but dangerous, and is therefore an activity that individuals or voluntary groups may pursue, but governments certainly should not." By the end of the nineteenth century, as Letwin observes, Beatrice Webb came to "equate the triumph of reason over passion with the rule of science over human life." Thus did the "pursuit of certainty" displace the traditional English understanding of the limitations of human nature—hence the necessity of limits to governmental power and programs. Consequently, in our time, "Politics was no longer one of several human activities and at that not a very noble one; it encompassed all of human life" in quest of philosophical "certainty" and social perfection. The Liberty Fund edition is a reprint of the original work published by Oxford in 1965.

Shirley Robin Letwin (1924–1993) was a Professor of Political and Legal Philosophy at Harvard, Cambridge, and the London School of Economics.

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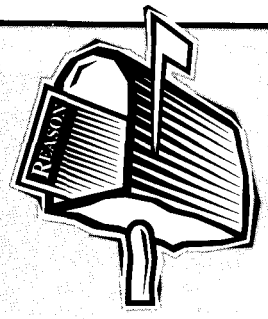

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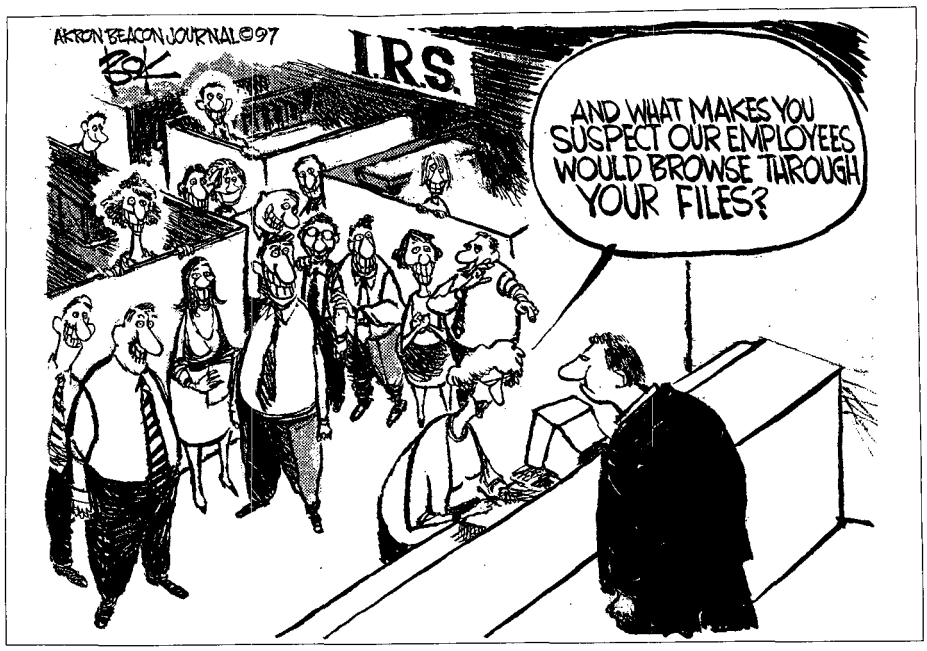


CHIP BOK

ing a security with no discernible purpose."

Among the clear losers under the new rules would be small banks; Robert Rowe of the Independent Bankers Association of America termed the proposal a "compliance nightmare." (On the other hand, many big banks, which have generally implemented know-your-customer programs already, seem to be on board with the plan; so does the American Bankers Association.) Also hard hit would be residents of many lower-income and immigrant neighborhoods; even law-abiding persons in those categories often fit a financial profile that includes numerous wire transfers, under-the-mattress cash hoards, and overseas payments. Lawrence Lindsay, formerly a Federal Reserve Board governor and now a scholar at the American Enterprise Institute, has noted that honest poor persons, after scrimping to amass the cash for a down payment on a house, are now stymied when wary bankers demand that they prove their money is untainted.

As readers of Hayek know, it's awfully hard for government to regulate just one thing. Citizens alter their behavior to dodge the rule, and soon officials face a choice of either extending the regulation or giving up on the original idea. The history of the crusade against money laundering exemplifies the point.

Thus controls on large cash transactions led holders of hot money to divide it into multiple deposits below the threshold—so-called smurfing—which meant smaller transactions had to be scrutinized too. Nor can enforcement efforts be tightly focused on major drug entrepôts such as Miami and New York, since money is so easily moved from city to city.

Already on the horizon are demands for stricter controls on brokerages, which make handy cash conduits, and perhaps life insurers too. "We want to see a level playing field," American Bankers Association laundering specialist John Byrne has announced, "and we won't be satisfied until every financial service provider in some way is accountable for knowing its customers in a similar way that banks are being asked to know theirs." Also looming is an even stranger fight over what might be called "merchandise laundering": Treasury and Customs are threatening legislation aimed at retailers who accept cash payment for bulk purchases of various goods—two of the most-publicized instances have involved sunglasses and home appliances—without investigating the buyers' bona fides.

Fear of financial freedom is also shaping up as a major impediment to the emergence of new transaction-settling technologies, such as Internet banking and smart cards. If genuine anonymity is permitted in such instruments, officialdom fears, the war against laundering is as good as lost. As a result, national regulators are tending to attach the kind of conditions to

such technologies that significantly limit their usefulness: restricting the "stored value" in a smart card to a low denomination, for example, or providing that only banks can issue such cards and only to their depositors. The other possibility—requiring full documentation on every transaction—is a privacy invader's dream. An anti-laundering panel of the Organization for Economic Cooperation and Development has discussed not only requiring a trail for transactions done on smart cards but also forcing all card issuers to enter such transactions into a central database.

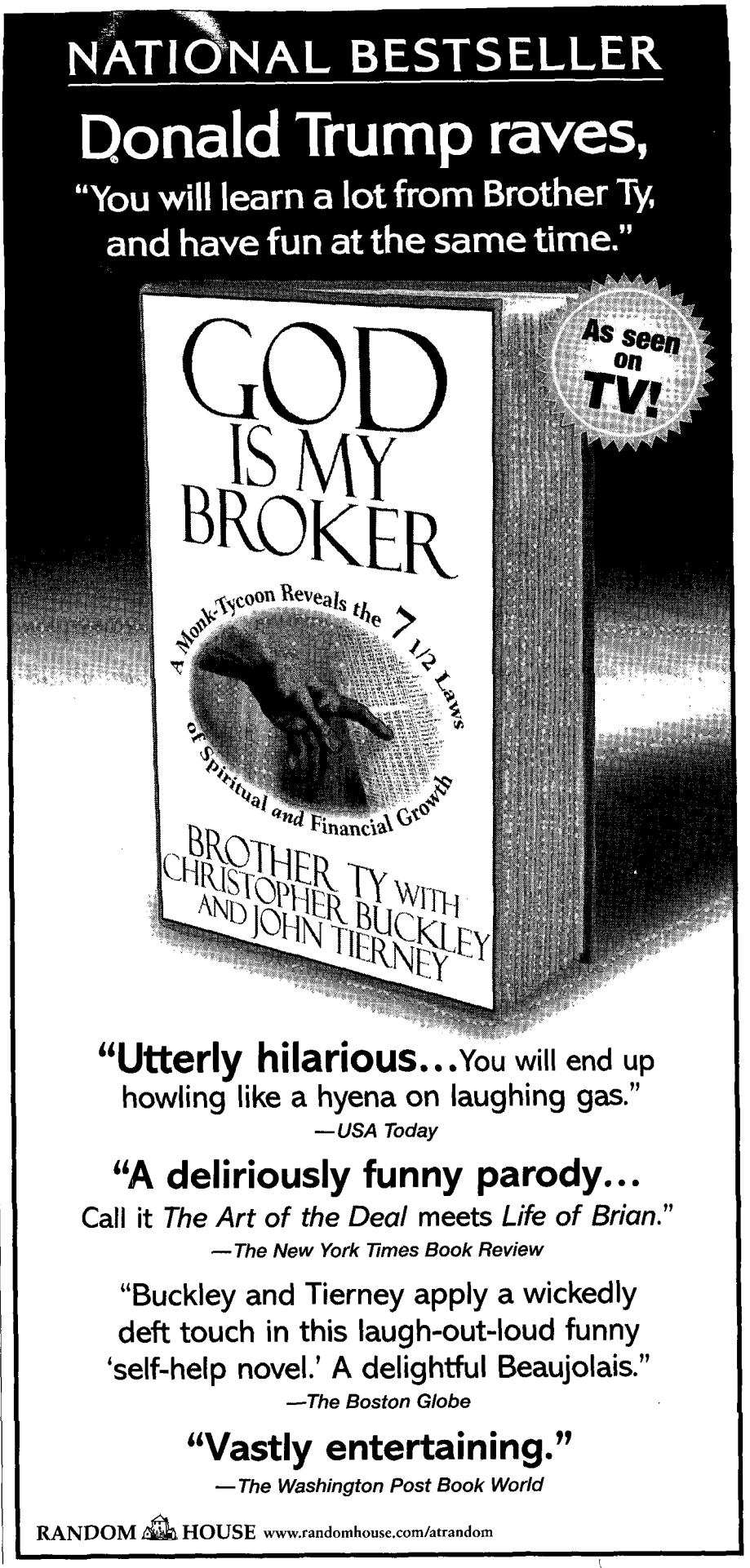
From his side, drug czar McCaffrey has identified the issue clearly enough. "Money will flow to whatever market is willing and available," he told the bankers associa-

"Money will flow to whatever market is willing and available," drug czar McCaffrey told the bankers association, which means victory in the drug war "requires us to close all markets to tainted funds."

tion, which means victory in the drug war "requires us to close all markets to tainted funds." In plain English, that means imposing controls, presumably barbed with today's Draconian penalties, on all markets. Not just the occasional Caribbean money order wired from a Miami bank but every transaction in the economy is to suffer the resulting inefficiency, friction, and privacy loss.

Lindsay, the former Fed governor, argues that the laws against money laundering have proved ineffective. "We are asking for a lot of compliance to catch a few people," Lindsay told a Cato Institute gathering in 1997. "We have overstepped the bounds of balance and reason today," he added, "and we as citizens should start reining our government back before [its] powers increase even further."

Contributing Editor Walter Olson (hambo@mags.net) is a senior fellow at the Manhattan Institute and the author of The Excuse Factory *(The Free Press).*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Burning Los Angeles

By Nick Gillespie

Ecology of Fear: Los Angeles and the Imagination of Disaster, by Mike Davis, New York: Metropolitan Books/Henry Holt, 484 pages, $27.50

No major American city seems more precarious than Los Angeles. There's a certain moon-base feel to the place, a sense that its inhabitants are living in a massive, well-provisioned bubble resting uncomfortably on a stunning but generally inhospitable landscape. It's damn near perfect inside the bubble, which is really a pleasure dome: glorious day after glorious day; striking mountains running into beautiful beaches; every possible human opportunity and diversion in overabundant supply.

But there are also constant reminders that the bubble might burst at any moment: smog alert days when the ventilation system isn't working quite right; wildfires that deposit ash over large sections of the city; brief but fierce rainstorms that create raging rivers of mud; and, of course, earthquakes that threaten to level the entire place in a few seconds. The potential for physical apocalypse has a psychic counterpart, too, in ever-present threats of race riots, gang warfare, street shootouts, and home-invasion robberies.

This is to say that, at least in terms of its negatives, L.A. is pretty much like every other city on the planet: It is constantly threatened with ruin from within and without. To be sure, on a superficial level, L.A. may seem even more artificial, more obviously constructed than most cities—signature flourishes such as carefully manicured foliage and ubiquitous automatic sprinkler systems underscore the effort necessary to grow things in the region. But that distinction fades when one strives to suggest a more "natural" alternative. None of the other largest American cities—New York, Chicago, Houston, and Philadelphia—is free of environmental and demographic tensions similar to those found in Los Angeles. While none of those places is prone to the spectacular rupture accompanying earthquakes, none would survive very long without constant maintenance, repair, rebuilding, and repopulation. (Consider, for instance, winter in Chicago and summer in Houston.) In the end, all cities are artificial in the best sense of that word: They are the result of massive, concerted, and continuing human activity.

In *Ecology of Fear: Los Angeles and the Imagination of Disaster*, Mike Davis takes a very different line. It's not simply that L.A. is plainly an unsustainable affront to Nature. Indeed, for Davis, author of *City of Quartz* and a fixture in left-wing publications such as *The Nation*, even the weather there stinks (he describes Southern California as a "secret Kansas" rife with tornadoes and vicious windstorms that the delinquent media fail to investigate fully). Although theoretically unconvincing and factually dubious, *Ecology of Fear* is nonetheless a compelling document. That's because Davis embodies fully the contradictory and incoherent impulses inherent in what F.A. Hayek rightly derided as the "engineering mentality," the notion that complex social interactions—such as city building—can be readily managed from above by planners and other wise souls.

If there's one thing that piques such a mind-set, it's messy, volatile, unpredictable market forces that decentralize decision making, thereby confounding prediction and control. Davis wastes no time in fingering the real culprit behind Hell A. "For generations," he writes on page 9, "market-driven urbanization has transgressed environmental common sense. Historic wildfire corridors have been turned into view-lot suburbs, wetland liquefaction zones into marinas, and floodplains into industrial districts and housing tracts. Monolithic public works have been substituted for regional planning and a responsible land ethic. As a result, Southern California has reaped flood, fire, and earthquake tragedies that were as avoidable, as unnatural, as the beating of Rodney King and the ensuing explosion in the streets."

Ecology of Fear is a detailed litany of those various eco-threats to L.A. The result is a sort of Irwin Allen production that, if nothing else, provides aid and comfort to East Coast intellectuals who scorn Southern California as a Potemkin metropolis beset by everything from killer bees to the Black Death.

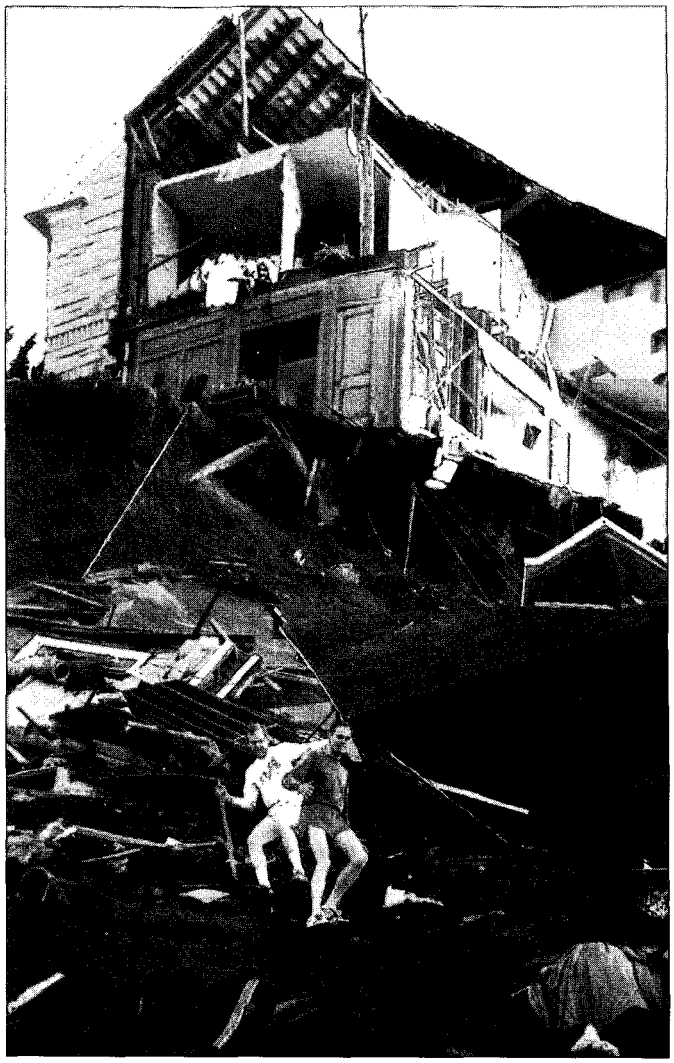
The bulk of *Ecology of Fear* is a detailed litany of those various eco-threats to the Los Angeles metro area. The result is a sort of Irwin Allen production that, if nothing else, provides aid and comfort to East Coast intellectuals who scorn Southern California as a Potemkin metropolis beset by everything from killer bees to the Black Death. In wide-ranging and quirky chapters, Davis explores endemic perils both obvious (earthquakes, forest fires) and arcane (mountain lion attacks, plague-carrying squirrels). Despite its often tendentious analyses of specific works, the long section titled "The Literary Destruction of Los Angeles" is a consistently engaging and nearly exhaustive compendium of books and movies that feature apocalyptic versions of the city's ultimate demise. The works surveyed run the gamut from Philip Francis Nowlan's Buck Rogers novellas to the *Turner Diaries* to *Blade Runner*; if nothing else, Davis has compiled a useful bibliography on the subject.

Davis simultaneously bemoans a general lack of public oversight and investment and critiques what he deems to be

specific misuses of such largess. In doing so, he is not wrong so much as misguided. Hence, he sensibly attacks "public subsidization of firebelt suburbs" in Malibu and elsewhere. He does so, however, not because he is against public subsidies but because he believes it to be money spent in areas best left undeveloped.

Indeed, for him, the original sin of L.A. was not a lack of government spending per se but its failure to push a program that accords with his particular vision of the city as a smaller, greener place. In 1930, at the request of a "distinguished citizens' committee" that included movie stars such as Mary Pickford, the renowned urban design firm of the Olmstead Brothers devised a comprehensive land use plan for the L.A. region that sought public control over much of the city.

The plan envisioned "pleasureway parks" built around the Los Angeles River and stringent "hazard zoning" that would combine to "stop the ill-directed spread of the population" and to curb "excessive and fictitious prices for raw land." Davis rhapsodizes about the report, calling it "a window into a lost future" and "a heroic culmination of the City Beautiful era in American urban design." If the report's recommendations had been enacted, he writes, "the results would have been virtually revolutionary. The existing hierarchy between public and private space in Los Angeles might have been overturned.... The speculative real estate market might have been counterbalanced by a vigorous social democracy of beaches and playgrounds."



AP / WIDE WORLD PHOTO

Foundation of Sand: Critics have pointed out any number of basic mistakes in *Ecology of Fear*. Davis' belief that the 1994 Northridge earthquake was the costliest disaster in U.S. history ignores both Hurricane Andrew and the Midwest heat wave of 1988.

Never mind that L.A.'s beaches are free and that parks and other communal spaces abound. Davis' unshakeable faith in public-sector planning keeps him from even contemplating the ways in which such processes inevitably go awry. (See "Dense Thinkers," January.) Still, it's a curious stance, particularly given that *Ecology of Fear* precisely documents the ways in which the sorts of commissions necessary for the type of planning he desires are inevitably hijacked by special interests. And yet, when Davis shifts from discussing "natural" disasters such as wildfires to "man-made" disasters such as tenement fires in downtown Los Angeles, he is left wondering why a government that already doesn't serve needy people is not up to the job. The answer to botched public spending is inevitably more public spending.

Such almost willful cognitive dissonance is massively compounded by factual errors. While Davis's book has garnered largely respectful, positive notices, the satiric webzine *suck* (www.suck.com) and Jill Stewart of the weekly *New Times Los Angeles* have pointed out any number of basic mistakes in *Ecology of Fear*. They cite the work of Malibu resident Brady Westwater, who dutifully checked Davis' footnotes and sources, only to find them woefully inaccurate—in fact, at one point, Davis cites himself contradicting himself. (Westwater has reportedly taken to giving tours of Los Angeles in which he points out the incongruities between Davis' version of the city and reality.)

"[Davis] claims that [L.A.'s] immigrant district of Westlake ...is the most fire-ravaged urban area in the country," writes Stewart, "when, in truth, it experiences only a modest level of urban blazes." Similarly, Davis' assertion that the Bunker Hill neighborhood has been gated and sealed off to keep out minorities is sheer fantasy, as is his notion that developers were planning to turn Hollywood Boulevard into a "gated theme park." His belief that the 1994 Northridge earthquake was the costliest natural disaster in U.S. history ignores both Hurricane Andrew and the Midwest heat wave of 1988. To write that "brazen coyotes are now an integral part of the street scene" in Hollywood and Toluca Lake is a characteristically bizarre overstatement. As the editors of *suck* sardonically suggest, *Ecology of Fear* employs "a formula that was tried and true when *The Day of the Locust* author Nathanael West was still drinking bathtub gin: 1) Make dire statements about the city of Los Angeles. 2) Predict impending and abundantly deserved apocalypse. 3) Collect paycheck."

In fact, Davis's flippant attitude toward facts and sources is something of a badge of honor to his admirers. In a glowing tribute to Davis for the newspaper *L.A. Weekly*, author Lewis McAdams recounts the "first time" he met Davis, back in 1989.

Davis was working on a story and wanted to use McAdams, then head of a group called Friends of the Los Angeles River, as a source. When the piece was done, McAdams writes, "I was amazed to discover [Davis had] fabricated an entire interview with me: We were standing together at the Fremont Gate entrance to Elysian Park, a place I'd never been, and I showed him a 'dog-eared 1890s topographical map prepared for City Engineer J.H. Dockweiler,' a document that I'd never heard of at the time. Though we'd never actually talked, the words he put in my mouth made me sound like I knew a lot more about the Los Angeles River than I actually did." It certainly gives a reader pause if, as McAdams puts it, "Davis is the first to admit that he won't let a fact get in the way of a good story." McAdams even quotes him as saying, "I was stunned...to find out that something I said turned out to be true."

That fly-by-night relationship with reality may be why Davis seems to have no sense that L.A. is going through a prolonged economic boom and experiencing its lowest crime rates in decades. It also points to a deeper problem lurking in Davis' analysis of Los Angeles, one that reflects the either/or thinking implicit in the engineering mentality. Steeped in such binary logic, the engineering mentality posits a particular vision of utopia and declares anything short of that an utter disaster. Conceptually, those are the only alternatives. By Davis' reckoning, if L.A. is not the one and only heaven then it must be absolute hell: If people are not going to be killed when "the next swarm of inevitable freak winds" crash 747s approaching Los Angeles International Airport, then they will die when tornadoes "swoop down on the Coliseum during the annual USC–Notre Dame gridiron duel."

Such a mind-set leads to some twisted conclusions besides the obvious. For instance, although Davis positions himself as a defender of the poor and the dispossessed, his vision of an environmentally "sustainable" L.A. metro area is one in which there would simply be no place for teeming masses (in this, he participates in the elitism that runs through much environmentalist thought). Consider how he juxtaposes two photos of Hollywood. The first, taken in 1905, shows open land with a few farm buildings on it. The second, taken only 20 years later, shows a densely settled area with houses as far as the eye can see. There is no question which scenario Davis prefers.

But who exactly benefited most from such development if not the poor and the working-class stiffs who flocked to Los Angeles for the opportunities the city offered? Indeed, perhaps the greatest deficiency in Davis' jeremiad is his inability to account for why increasing numbers of people—whether poor, middle-class, or rich—continue to call L.A. home. Are the thousands of migrants from all over the world who gravitate there simply suckers waiting to be devoured by the coyotes that now supposedly prowl Hollywood Boulevard? Or does their willingness to relocate reflect knowledge that Davis' grand theorizing fails to consider?

This is not to mistake L.A. for paradise or to engage in the Panglossian boosterism that cities often inspire. L.A., like all cities, has problems that it can negotiate more or less successfully. How *well it does* so will mean the difference between flourishing and stagnating. It is no easy feat, after all, for millions of people to live in close quarters relatively peacefully. But the city's very existence is hardly one of those problems —and *Ecology of Fear*'s feverish analysis is hardly a place to look for solutions.

Nick Gillespie (gillespie@reason.com) is a REASON *senior editor.*

Fuzzy Logic

By Lynn Scarlett

Principles for a Free Society: Reconciling Individual Liberty with the Common Good, by Richard Epstein, Reading, Mass.: Perseus Books, 368 pages, $27.50

These days, fashionable environmentalists sound like neoclassical economists. They chatter about the need to "internalize externalities," pressing for eco-taxes on greenhouse gases, sulfur dioxide emissions, wasteful packaging, noise, fumes, mine tailings, chemical consumption, and any other perceived "bad" that captures their attention. This notion of externalities as a form of "market failure" opens up endless possibilities for state intervention.

The possibilities are endless because, as Richard Epstein observes in his latest book, *Principles for a Free Society*, "every action, every transaction has innumerable consequences—positive and negative—that spill over to other people." Leaves from one person's tree fall onto another's yard; a car door slams across the road, jolting someone from his midday reverie; a plane flies 30,000 feet overhead, leaving an unnatural scratch upon the sky; neon pink trim around the windows of a house offends a neighbor's sense of aesthetics and propriety.

Many staunch champions of property rights and market institutions have inadvertently aided and abetted this undisciplined demand to internalize externalities. They have done so by confidently asserting two absolute principles: the "do no harm" principle and the right to private property. Like their counterparts in the modern environmental movement, they have reduced complex matters of human interaction to bumper-sticker phrases. Under this absolutism, writes Epstein, all manner of "harms"—from the neighbor's falling leaves to slamming car doors—"cry out for relief."

Epstein, the James Parker Hall Distinguished Service Professor of Law at the University of Chicago, sets out to peel off the bumper sticker and replace it with a more nuanced depiction of classical liberalism, one that resurrects some ideas well understood and studied by Scottish philosopher David Hume, utilitarians like Jeremy Bentham, students of spontaneous order like F.A. Hayek, and contemporary social theorists like Robert Ellickson. He attempts to reinvigorate the political theory of laissez faire "not by restating its

narrow anti-fraud conception, but by expanding it to accommodate hold-out and coordination problems."

Principles for a Free Society is a frustrating but, in the end, captivating book. Epstein aims, I think, for a nonacademic though erudite audience. The book has too few references and too little thoroughness in argumentation to satisfy academics. Yet it is much too densely written, with too few concrete examples and too little explication of the many court cases it cites, to appeal to the armchair political philosopher.

Epstein's intended audience is unclear in another way. Sometimes he seems to be arguing primarily with those he calls "libertarian absolutists." At other times, he seems to be speaking to modern critics of laissez faire in an attempt to convince them that libertarian philosophy is robust, practical, and desirable.

The strength of Epstein's book is precisely its recognition of nuance, semipermeable boundaries, and complexity in human affairs. He prods, pricks, and pushes the advocate of individual rights to think about what this might mean in real situations.

That philosophy, in Epstein's version, acknowledges that not all human action springs from economic self-interest. It accounts for problems of coordination and "holdout" threats of noncooperation. It makes a place for social norms and custom alongside economic institutions. Its remedies for harmful human action span a continuum from social opprobrium to coercive restrictions.

This is an admirable agenda. But I fear that Epstein tries to do so much that his effort will go right over the heads of most readers yet fall short of the careful argu-

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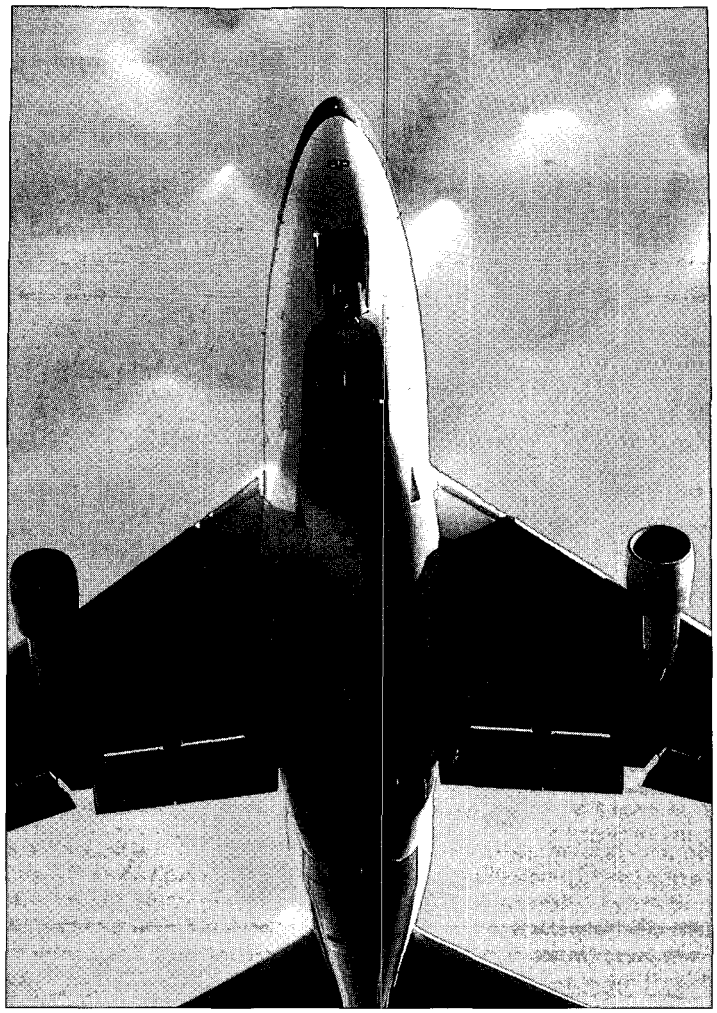
mentation necessary to really intrigue his fellow scholars.

Still, for the determined reader, *Principles for a Free Society* is chock-full of insights and wisdom. In discussing social norms, the concepts of harm and benefit, remedies for harm, and ideas of property, Epstein weaves together two primary tasks. First, he attempts to bridge the gulf between those who argue for private property, individual rights, and freedom of contract from a "natural law" perspective and those who advance these ideas from a more utilitarian perspective. Second, he explores ideas of property, contract, harm and benefit principles, and remedies against harm "at the margin,"—those blurry realms where boundaries are fuzzy, coordination and holdout problems are great, and Adam Smith's "invisible hand" is weak.



Plane Truth: Epstein cites airplane overflight as a case where the externality risk is minuscule and the holdout risk is large. In such instances, the law developed to minimize the holdout problem rather than avoid the extremely small externality.

Epstein considers himself a consequentialist: Put simply, private property, individual rights, and freedom of contract are desirable because they enhance human well-being. Ideas of individual liberty are, he writes, "best understood not as an effort to glorify the individual at the expense of society, but as the embodiment of principles that, when consistently applied, will work to the advantage of all (or almost all) members of society simultaneously." He rejects as "obscure and occult" efforts to find individual rights "out there like a rock or stone."

This rejection of natural law theory will not sit well with many of those whom Epstein calls libertarian absolutists. Without claims to some natural right to property and individual liberty, the propensity to slide down a slippery slope to endless state intervention seems hard to resist. This is the fundamental worry that some modern classical liberal philosophers have about the works of Hume and Hayek.

Like Epstein, Hume and Hayek make an organic, "ground up," experiential case for liberty rather than one premised on some set of eternal, a priori natural laws intrinsic to humanity. Roughly speaking, they tend to argue that what works is what's good. This view is not as relativist as it might at first seem, since they anchor their measure of the good in the individual. They see values as springing from individuals rather than residing in some "public good" that is more than the sum of individual yearnings. Still, scholars who celebrate the works of Hume and Hayek have spent a good deal of time trying to square the consequentialist tone of their work with a more definitive (absolutist) protection of individual rights and private property.

Natural law theorists and absolutist libertarians will no doubt have the same complaints about Epstein's book. In acknowledging holdout and coordination problems in particular circumstances, such as some pollution problems, he opens the door to the use of eminent domain or government intervention. If pollution is discharged, the costs to any individual neighbor of seeking an injunction may be greater than the benefits to that individual, even though total benefits to all neighbors may well exceed the costs of bringing a court action. Epstein writes, "while in principle it is possible to pool expenses to obtain that injunction, the familiar litany of coordination and holdout problems will likely scuttle that enterprise before it bears fruit." In this instance, Epstein concludes, "the state may assume a useful role in coordinating relief from threatened harms. Epstein also accepts denial of remedy when the harm is small but the public gain in denying a remedy is great: He gives the example of airplane overflight, where acquiring permission from every affected property owner would be prohibitively expensive, largely because holdout problems are substantial, yet harms to individual property owners are tiny.

But the strength of Epstein's book is precisely its recognition of nuance, semipermeable boundaries, and complexity in human affairs. He prods, pricks, and pushes the advocate of individual rights to think about what this might mean in real situations.

Discussing private property, Epstein notes that custom, tradition, and common law have allowed for occasional violations of its sanctity—and rightly so, he argues. He offers the example of the "necessity principle," which allows the unauthorized use of another's property in cases of emergency: a ship at sea in a severe storm docking at someone else's pier without permis-

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sion (and with no requirement to pay for the privilege). His arguments do not constitute an open-ended justification for expropriation; he notes that the docking privilege ends once the storm is over.

Epstein also points out that defining who owns what is not at all straightforward, showing the limits of John Locke's "mixing of labor" theory as well as the limits of "first acquisition" theories. Does a landowner with an opening to a cave own the entire cave, even those portions under someone else's property? Does the owner possess just that portion under his own land? How does "mixing of labor" to develop the cave change, if at all, the allocation of property in the cave? Epstein describes court cases in which just these questions resulted in decades-long disputes that no mere appeal to either a "do no harm" principle or a "right to property" principle could resolve.

It is Epstein's discussions of fuzzy boundaries, harms, and remedies that I found most interesting, perhaps because they are issues that I often contemplate in the realm of environmental policy. Epstein argues for jettisoning the notion of completely rigid boundaries.

On the one hand, he notes, a legal system premised on internalizing all spillover effects would be enormously costly (and unpleasant). He writes that it would be "too burdensome to champion a system in which every individual action has to be justified to every other person"—which is, in effect, what would result from demanding that all spillover effects be accounted for.

We tolerate accidental contact in a crowded mall, or the neighbor's slamming car door, or an occasional barking dog (maybe). We do so under a sort of "live and let live" attitude that recognizes, first, that these interactions among neighbors and within communities are usually reciprocal and, second, that they generally do not have very serious consequences. Social norms and customs handle these circumstances well without the intervention of laws, including laws to more clearly define boundaries and rights.

On the other hand, Epstein, in what seems like a subtle chastising of some property rights zealots, argues that it is "not costless to ignore spillover effects and to proceed as though the only gains and

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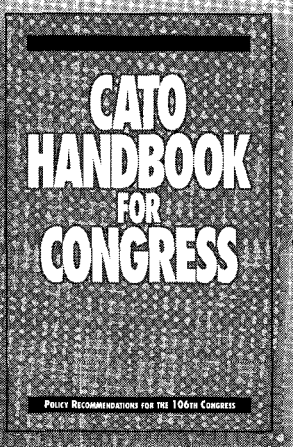

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losses that count are those that are naturally borne by the actor himself." The "I can do anything I want with my property" mindset often seems to assume that the only thing that counts as a trespass or nuisance is a physical invasion of another's property. Not so, says Epstein; the trick is to figure out which of these invasions really matter and what sort of remedy is appropriate in each case.

This is where Epstein's book becomes truly fascinating. Any number of remedies for harms exist, from what Epstein calls "self-help" in which an individual, claiming harm, unilaterally acts to recover his property, to court damages, injunctions, and specific performance requirements. He distinguishes between a "property rule," which essentially requires restitution of the property in question and a ceasing of the harm, and a "liability rule," which provides compensation for damages. He rejects the absolutist notion that a strict property rule should always prevail and that the very idea of a forced transfer is contrary to individual liberty. "That heroic stance," he writes, "fails...in functional terms because it assumes, without contextual examination, that an absolute rule of property protection will always outperform the more nuanced protection of a liability rule."

Epstein does believe the presumption ought to be in favor of a strict property rule. If someone encroaches on a neighbor's property, building a structure one inch over the boundary, for example, the rule ought to require removal and restoration of the plaintiff's full property. Such a rule discourages intentional encroachment and encourages attention to detail. But Epstein cites cases (such as airplane overflight) where the externality risk is minuscule and the holdout risk (in this case, the risk that someone would demand near-extortionate payments before agreeing to the overflight) is large. In such instances, the law developed to minimize the holdout problem rather than avoid the extremely small externality.

Of course, a different way of viewing the overflight case would be to argue that a strict property rule should remain intact but that showing harm requires more than pointing to a spillover effect. As Epstein himself acknowledges, a strict property rule requires a showing that a trespass or nuisance has in fact occurred before a remedy can be provided. Depending upon how property rights and harm are defined, an airplane overflight may not amount to either.

The interesting point here is that either way of viewing the overflight issue—as a choice between a property rule and a liability rule, or as a conundrum regarding whether a boundary has been crossed and a harm has occurred—confirms Epstein's basic argument that an absolutist approach cannot resolve all real-world problems. Choices of legal rules involve not just facts but concepts that involve value judgments.

Those who worry about preserving liberty, private property, and freedom of contract can take heart that Epstein offers useful arguments on behalf of these concepts as centerpieces of his political vision. But he also offers, to those who recognize the omnipresence of fuzzy boundaries, shared spaces, and coordination problems, a broad-brush look at these issues and the ways in which social norms, economic practice, and legal institutions might (and often do) work out a balance between individual liberty and human cooperation.

Lynn Scarlett (lynns@reason.org) is executive director of the Reason Public Policy Institute.

Selling Opportunity

By John McClaughry

Transformation: The Promise and Politics of Empowerment, by Clint Bolick, Oakland, Calif.: Institute for Contemporary Studies, 166 pages, $21.95

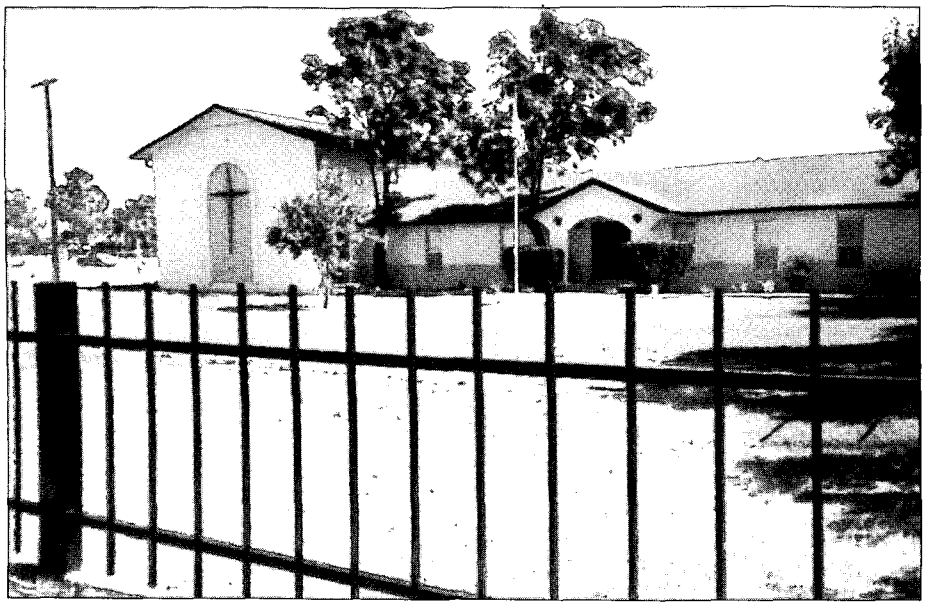
Libertarian public interest lawyer Clint Bolick is rightly esteemed for aggressively defending the right of ordinary people to pursue their callings free from the clutch of the bureaucratic state. In doing so he has become one of the modern-day heroes of economic liberty, individual opportunity, and equality before the law. In *Transformation* he sets forth a clear-headed picture of what Americans can become if only government will change the rules to foster enterprise instead of dependency.

Texas' Teen Challenge is one of the many illuminating examples Bolick offers to illustrate how government stifles the creative energies of a free people. Founded in 1958, Teen Challenge is a faith-based drug rehabilitation program which accepts no public funds. In helping drug users get their act together and get clean, it achieved a remarkable long-term success rate: from 67 percent to 85 percent. The National Institute on Drug Abuse has remarked favorably on these striking results.

No matter. In 1995 the Texas Commission on Alcohol and Drug Abuse threatened the Teen Challenge officials with jail and $4,000-a-day fines, because the program did not employ licensed professionals or follow the state's official treatment regimen. Even such absurd charges as having "frayed carpeting" were tacked on to blacken the project's reputation.

Fortunately, Bolick and his Institute for Justice colleagues appeared on the scene, along with 325 angry church members, former addicts, and other Teen Challenge supporters. Texas officialdom backed down. Teen Challenge was left to do its good works without further harassment from government officials whose own bureaucratic programs succeeded mainly at making perpetual work and sending perpetual bills to the taxpayer. Teen Challenge has now expanded to 130 sites around the country.

This happy ending, alas, is not typical. During the last 40 years government has become the major obstacle to individual and community self-help and thus to social progress. In a sentence that ought to be repeated endlessly everywhere that



Successful Challenge: Texas-based Teen Challenge is one of Bolick's model institutions. The now-common term *empowerment* stems from the theme of "empowering" that pervaded a little-noticed but prescient book by Nathan Wright Jr., *Black Power and Urban Unrest* (1966). Unlike Clinton-era liberals, who conceive of empowerment as an entitlement to more government benefits, Wright understood clearly, as does Bolick, that empowerment means allowing people the full and fair opportunity to do for themselves and enjoy the benefits of their labors.

social issues are debated, Bolick writes of the plight of the inner-city bootstrap entrepreneurs he has so often represented: The "crushing regulatory barriers" that defeat their enterprise are "kept in place by a powerful and reactionary coalition of labor unions, liberal politicians, government bureaucrats, and sheltered businesses determined to keep newcomers out."

Bolick is far from the first to catalog such cases. There is a substantial literature on this subject, including Richard Cornuelle's *Reclaiming the American Dream* (1965), Morgan Doughton's *People Power* (1976), the report of the Carter-era National Commission on Neighborhoods (1978), and Walter Williams' *The State Against Blacks* (1982). Indeed, one can go back further, to Alexis de Tocqueville, Wilhelm von Humboldt, Toulmin Smith, Albert J. Nock, and Felix Morley.

The now-common term *empowerment* stems from the theme of "empowering" that pervaded a little-noticed but prescient book by Nathan Wright Jr., *Black Power and Urban Unrest* (1966). Unlike Clinton-era liberals, who conceive of empowerment as an entitlement to more government benefits, Wright understood clearly, as does Bolick, that empowerment means allowing people the full and fair opportunity to do for themselves and enjoy the benefits of their labors.

Like many of his predecessors, Bolick writes that "eliminating barriers to self-determination is the object of empowerment." Recognizing that freedom is an indispensable precondition for progress, prosperity, community, and social harmony, he demands that ponderous, costly, malicious, interest-dominated, monopolizing government get the hell out of the way and let people have a fair chance to build better lives for themselves and their communities.

Bolick says creative public policy should be based on what he calls the "two Cs and three Ds": choice, competition, deregulation, decentralization, and depoliticization. He describes the application of that prescription to education, welfare, economic liberty, housing, crime, and community renewal.

At the end of each chapter Bolick sets forth a handful of specific proposals to advance the empowerment philosophy. A sampler includes parental choice in education, charter schools, deunionizing schools, occupational delicensing, ending government wage fixing, "empowerment zones" in which government relaxes restrictive economic regulation, community development corporations, welfare-to-work programs, child care credits, expanded home ownership, community policing, victims' rights, and the Talent-Watts American Community Renewal Act, which would offer neighborhoods a wide range of tax incentives, regulatory relief, homeownership incentives, scholarships, and devolution of government services.

Bolick recognizes and describes in frightening detail the social problems caused both by drug abuse and by the enforcement of harsh laws against drug abuse. He observes that full legalization of drugs remains beyond the range of popular acceptability, but his prescription is uncharacteristically feeble: "Statesmanship, not political demogoguery, is necessary to address the very real drug problem in this country."

If there is a weak point in *Transformation*, it lies in Bolick's imprecise use of the term *community*. Is it just shorthand for the multiplicity of voluntary organizations in an area? Or does it refer to a locally based entity to which governmental functions are assigned? The former interpretation leaves one wondering just who or what is supposed to take action, while the latter raises questions of legitimacy and governance which Bolick does not acknowledge. He has elsewhere inveighed against "grassroots tyrannies" that stifle enterprise and progress at the local level. How to keep a "community" from committing the same kind of sins is worth at least some discussion.

Citing Margaret Thatcher's successes in Britain, Bolick concludes that "the challenge is to create—through economic liberty, private sector education alternatives, private property ownership, and so on—a tangible stake in freedom for those who are dependent on the government....Our task is to illustrate, vividly and tangibly, the real-world human benefits of freedom to people who have been most denied it."

Doing so, he argues, will create powerful new coalitions between government-dependent people who yearn for independence and libertarians who want to free all people for growth and achievement. Bolick has demonstrated this repeatedly in his own work, with the voucher parents of Milwaukee, the jitney drivers of Denver, and the African-American hair-braiders

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of Washington.

The more people grasp the argument of this readable book, the more America will heed the admonition of young Congressman John F. Kennedy: "Every time that we try to lift a problem from our own shoulders, and shift that problem to the hands of the government, to the same extent we are sacrificing the liberties of our people."

Contributing Editor John McClaughry (john@ethanallen.org) is president of the Institute for Liberty and Community.

Learned Nonsense

By Mark Goldblatt

Aliens in America: Conspiracy Cultures from Outerspace to Cyberspace, by Jodi Dean, Ithaca: Cornell University Press, 242 pages, $15.95 paper

The author of *Aliens in America,* Jodi Dean, is a professor at Hobart and William Smith Colleges; the publisher is a respected university press. With a cursory glance at the title, therefore, an unwary reader might anticipate a learned inquiry into extraterrestrial phenomena. But in Dean's poststructuralist take on UFO sightings and alien abductions, E.T. takes a back seat to politics. From the first page to the last, in fact, the author remains doggedly agnostic with regard to the reality of what she is describing. Reality itself (a word she prefers to put inside quotation marks) is pretty much beside the point for Dean, whose academic field is not astronomy but political science and whose previous work concerned the rather more earthbound subjects of feminism and identity politics.

Dean's thesis in this book, insofar as it can be encapsulated, is that "to claim to have seen a UFO, to have been abducted by aliens, or even to believe those who say they have" constitutes "a political act" because it "contests the status quo"—a status quo that is both political and epistemological. On the political front, she rounds up and slimes the usual bêtes noires of the left: white guys, big corporations, the military-industrial complex. On the epistemological front, Dean's case is far more radical, arguing that the popularity of ufology "marks the widespread conviction that previously clear and just languages and logics...are now alien, now inseparable from their irrational others." Alien narratives, in short, "challenge us to face head-on...the dissolution of notions of truth, rationality, and credibility" in the information age.

Before continuing, I should note that already I have misrepresented Dean's enterprise. To refer to her thesis as a "thesis" is to belie the book's critical method and, ultimately, its raison d'être. For *thesis* implies a logical structure, an argument developed according to principles of inductive and deductive reasoning. By contrast, Dean's book is based on a technique of pseudo-analysis that amounts to a verbal Rorschach test. Rather than argue points, she *links*—her favorite word—disparate ideas by mere juxtaposition, forging connections that range from mildly intriguing (UFO sightings are linked with apocalyptic anxieties in our era and in the last *fin de siècle*) to bizarre (astronauts are linked with mainframe computers, witnesses to alien abductions with networked PCs) to obscene (the death of Christa McAuliffe in the *Challenger* explosion is linked with the perception of outer space as menacing and, finally, with the supposed sexual violation of female abductees).

What you get, in effect, is a *performance,* a routine of synaptic somersaults in which Dean free-associates on the themes of aliens and UFOs. Mostly, it's by-the-numbers stuff: The space race, she notes, was more about politics than science; the seven original Mercury astronauts were all white, male, and married—and thus did not represent a true cross section of America; and the Internet has enabled people who would once have been deemed harmless kooks to connect and form a growing subculture.

But the performance veers toward unintended farce in moments of wildly misplaced smugness, the philosophical equivalent of Wile E. Coyote's triumphant snickering as he lights the fuse of his Acme rocket skates: "It is hardly surprising," Dean writes, "that a new skepticism toward religious thinking—this time that which masks itself as science—has emerged." Or: "I guess he [a writer who stresses the importance of fact checking] is reassured by the vagueness of categories such as 'facts' and 'reality' and the nostalgia they invoke." Or: "The fact that abduction accesses the stresses and excesses of millennial technoculture doesn't get to the truth of abduction (as if getting to truth were still a possibility)."

Aliens in America is symptomatic of a much deeper problem in American intellectual life. The problem is that a growing number of highly credentialed academics simply do not know how to think. Not _what to think_—the reason colleges exist is to haggle out what to think—but _how to think._

Considered in itself, Dean's is a profoundly silly book on a numbingly pathetic subject—a parade of the duped and the deluded marshaled in support of highbrow posturing by which the duped and the deluded would themselves be appalled. After all, if you spend your life insisting on the reality of your alien encounter, you do not want to hear that "reality" is itself an illusion.

Considered as a scholarly work, written by a college professor and published by a university press, Dean's book is symptomatic of a much deeper problem in American intellectual life. The problem is that a growing number of highly credentialed academics simply do not know how to

think. Not *what to think*—the reason colleges exist is to haggle out what to think—but *how to think*. Rational argument is no longer the sine qua non of the advancement of propositions among educated people; indeed, rationality is seen in certain circles not as a method of getting at truth but as an instrument of oppression. As Dean writes: "Argument, thought by some to be an important part of the process of democracy, is futile, perhaps because democracy can bring about Holocaust."

Argument is *linked* to democracy. Democracy is *linked* to Holocaust. Therefore: Argument is evil. Q.E.D.

The most significant question raised by Dean's book, on reflection, has nothing to do with ufology. Rather, it is a more general question: How did nonsense—as a critical genre—come to be equated with scholarship?

As I mentioned at the outset, *Aliens in America* is a "poststructuralist" take on the phenomena of UFO sightings and alien abduction. The term, however, requires clarification. Poststructuralism is the philosophical position, or anti-position, that underpins much of the trendiest academic work, including Dean's. It is a theoretical approach to texts that gained a brief cachet among leftist intellectuals in France in the late 1960s and soon thereafter found a lasting niche in literature and social science departments on American campuses. To understand poststructural theory, you must know its genesis. Despite its French popularizers, it is the bastard child of American New Criticism of the 1930s and '40s—in particular, the precept that the meaning of a text is not controlled by the artist's intention.

The New Critics held that a text, once created, should be divorced from what is known about its creator, and its meaning subsequently negotiated, as it were disembodied, by its critical audience. Yet the New Critics never doubted that a text was held together by a "voice," perhaps nonauthorial but still a unified presence, or that the text possessed a set of coherent meanings, or that it would sustain certain meanings and contradict others.

The poststructural twist on New Criticism was the denial that a coherent meaning could ever be had; poststructuralism declared, on the contrary, that *every* reading is a misreading, that language is always indeterminate and self-contradictory, unbound by any unified voice, and hence that every effort to pin down a meaning is doomed from the start. From such premises is derived the practice of "deconstruction"—the teasing out of secondary and tertiary senses of individual lines, words, or even syllables to show how a text contradicts what it seems clearly to mean.

To wit, Jacques Derrida's notorious defense of his poststructuralist colleague Paul de Man, who, as a literature professor at Yale, helped popularize deconstruction. In a 1940 essay for the pro-Nazi newspaper *Le Soir*, de Man, then living in occupied Belgium, stated, "One can thus see that a solution to the Jewish problem that would lead to the creation of a Jewish colony isolated from Europe would not

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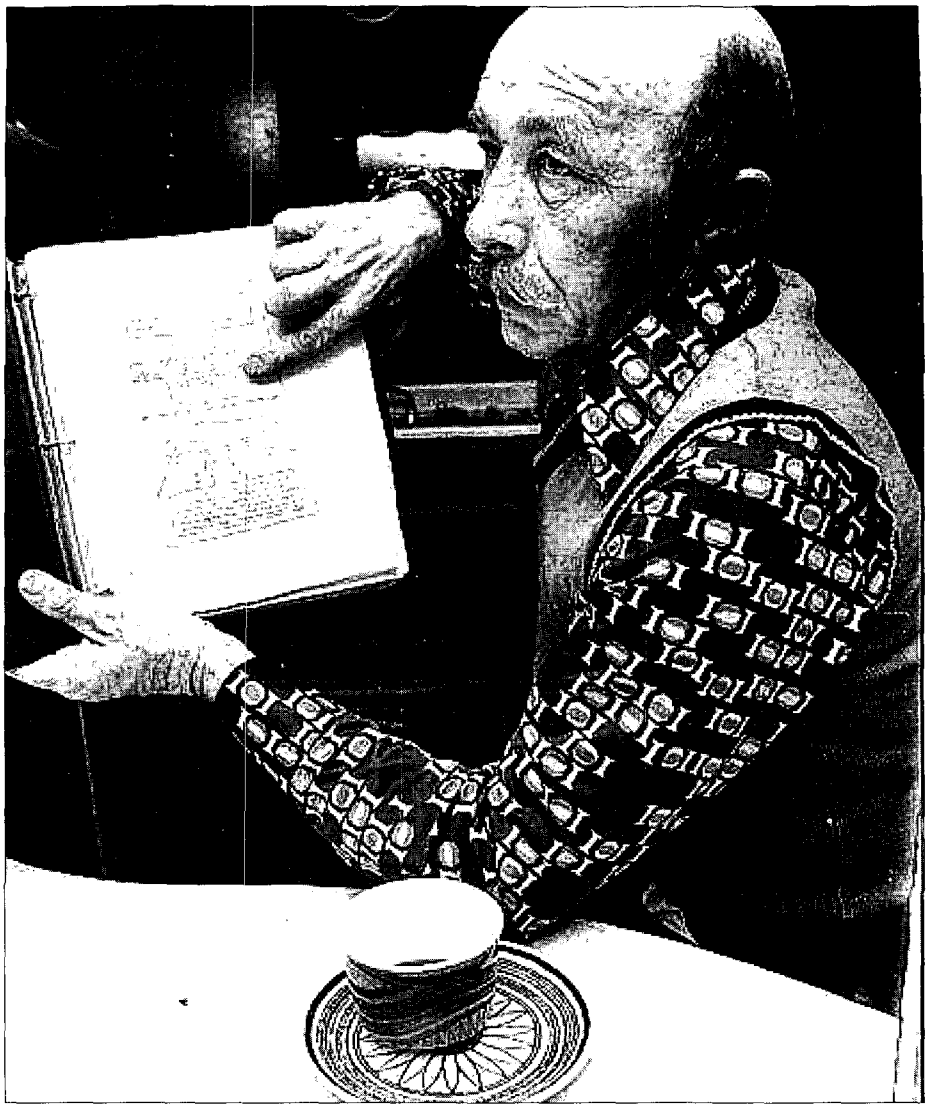
have, for the literary life of the West, regrettable consequences." In 1988, when de Man's wartime writings became public, Derrida defended his friend, contending that de Man was compelling us to think the unthinkable—the erasure of Jews en masse from Europe. In so doing, Derrida argued, de Man reminded us of the right of all people to live in peace.

When the critic's goal is to find contradictions, rather than to reconstruct what the text means, then he or she can set aside the logic of observation and inference and take up free association, word play or, in Dean's case, "linking." Thus, the poststructuralist exercise (*project* is the preferred term but fails to convey how tiresome and repetitive the approach becomes) is always the same: To show how every text *resists* yielding up a unified, coherent, common-sense meaning—and how such resistance thereby challenges the very idea of "common sense."

The text itself need not be a poem or a play or a novel. It can be a religious tract or a political treatise. Or a painting or a photograph or a movie. Or, in more recent examples, a sitcom or soap opera or commercial. Or a pop star. Or a criminal trial. Or, in the case of *Aliens in America*, the phenomena of UFO sightings and alien abductions. Despite its apparent novelty, then, Dean's exercise remains the perpetual poststructuralist exercise: to show how the text *resists* a unified, coherent meaning, and thereby challenges common sense. "UFO belief," she writes, "thus challenges the presumption that there is some 'public' that shares a notion of reality, a concept of reason, and a set of criteria by which claims to reason and rationality are judged." And again: "Against a scientific priesthood, the individual is held up as an independent source of knowledge. Supporting abductees, or at least respecting their right to their opinions, appears to be radical, a way to resist (for a time) the dominance of scientific and government elites invested not simply in a particular determination of the real, but in set hierarchies for the production and validation of legitimate knowledge."

The challenge to common sense, therefore, constitutes not just an act of epistemological resistance but also of political resistance: "Abductees acknowledge that, from the perspective of the dominant culture, their words are illogical, unreasonable, unscientific. Yet they insist, as a matter or right, truth, and survival, that these words be spoken. They speak, braving the incredulity they know they will encounter, because they experience it themselves."



The "Truth" Is Not Out There: The fact that alien abductees cannot adequately support what they believe is sometimes seen as support for their experiences. (Pictured: Charles Hickson of Pascagoula, Mississippi.)

AP / WIDE WORLD PHOTO

Speaking the truth to power: In the final analysis, it is the political utility of poststructuralism, regardless of the sheer inanity of the theory itself, that accounts for its adoption by the intellectual left. As Dean states: "Various Marxists, feminists, and multiculturalists have stressed the importance of knowledge gained at the margins; the importance of the standpoint of the oppressed as epistemologically superior to the falsely disembodied, disconnected view from nowhere. There are myriad perspectives on the world, each with its own legitimate claim to the truth."

So, for example, if you're a multiculturalist, you can argue—against historical evidence—that Greek philosophy is derived from sub-Saharan Africa; or if you're a feminist, you can argue—against biological evidence—that gender is completely a social construct; or if you're a Marxist, you can argue—against experiential evidence—that socialism is compatible with individual rights. What could be more useful, if you can't make a coherent, rational case for what you believe, than a theory that undermines the notion of objective truth, that relativizes all knowledge?

Perhaps, then, it was inevitable that poststructuralism and ufology find each other, since both sets of believers stake out logically invincible positions. As Dean herself points out, "From its early years in the cold war up through today, ufology has attributed the paucity of physical evidence of flying saucers to a vast cover-up, explaining that the nation's political, economic, and religious institutions would collapse if the alien truth were known." Thus, the fact that believers cannot adequately support what they believe is itself a kind of support; indeed, when someone writes a book dissecting and demolishing their scarce "evidence" (as the late Carl Sagan did in 1990's *The Demon-Haunted World*), this is only further proof that they are onto something big.

Poststructuralists similarly stake out irrefutable positions. Critiques of the theory are dismissed as mere *logical* objections—poststructuralism, its advocates contend, calls into question the dominant status of logic in intellectual exchange and thus stands above such quibbling. Several of its best known practitioners even reject the principle of noncontradiction (x and not-x cannot simultaneously be predicated of y) as an arbiter of truth or falsehood. Apparently so does Dean. Hence, she can blithely assert on page 173: "Confronted with dissolution, insecurity, surveillance, and paranoia, the best response could well be not to respond at all, to wait and see what happens. The problem is that too much happens." But then, on the very next page, without a trace of self-consciousness, she can also assert: "The audience identifies with the characters on *Seinfeld* because nothing ever happens to any of us."

Too much happens. Nothing ever happens. Such is the universe through the poststructural looking glass. Lack of evidence is evidence of suppressed evidence. Logical contradiction is no bar to academic argument. If there are indeed aliens among us, they must be shaking their heads.

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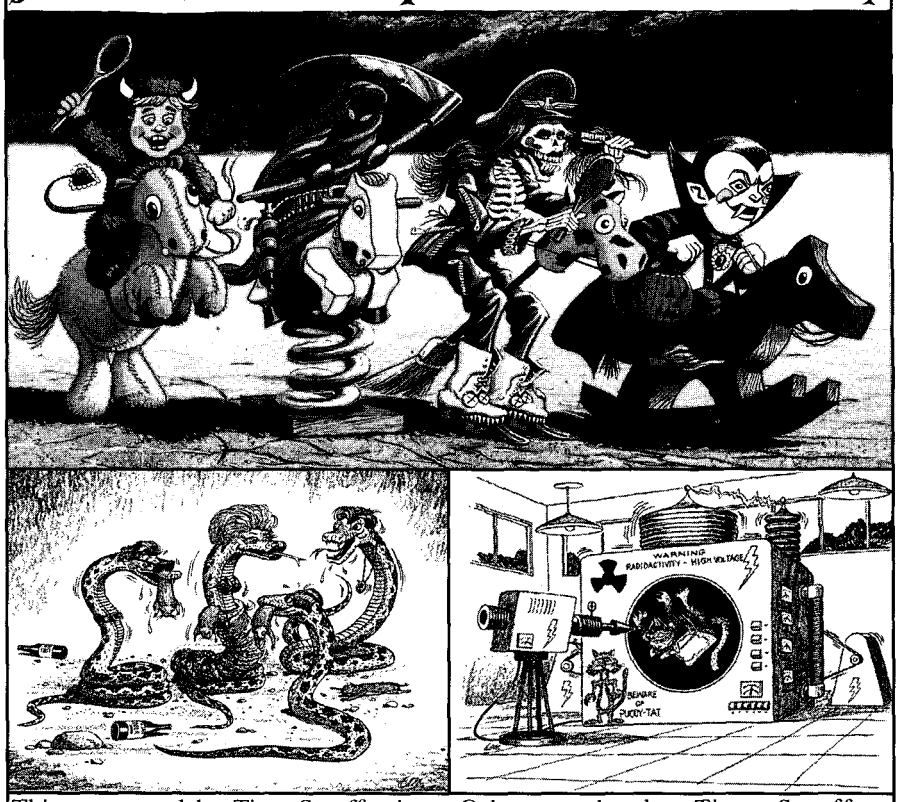
Jurassic Horde Whisperer of Madness County



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Back in the USSR

Post-communist society's top economic output: capitalist straw men

By Thomas W. Hazlett

There is now a rolling undertow in many of the news stories about East European countries, particularly Russia: Capitalism is by its nature corrupt, and only a generous dollop of governmental control—a check on the thugs who inevitably rule the marketplace—can save the wretched masses since the communist state has withered away.

As *The Nation*, yet tearful over the collapse of serious socialism, frames the lesson: "After seven years of economic 'reform' the majority of the Russian people find themselves worse off economically. The privatization drive...helped to create a system of tycoon capitalism run for the benefit of a corrupt political oligarchy."

Curiously, the media has mostly ignored the successes of places such as Estonia and the Czech Republic, where rapid and sweeping privatization programs—along with relatively secure property rights—created momentum for the legal, political, and cultural changes necessary to make the transition from a command economy to a market-based one.

When the Soviet Union imploded in 1991, virtually all productive assets (not counting human beings) belonged to the state and were controlled by Communist Party hacks—the nomenklatura. The government owned the factories, shops, stores, airlines, telecoms, energy sources, land, farms, houses, hospitals, schools—you name it. With the collapse of the socialist regime, do you simply flick a switch and put these productive resources in the hands of new, private owners?

Sure—in the made-for-TV version. In fact, the managers of these enterprises maintained their power: Only they knew where the inventory was kept—the state had barely the roughest idea about what assets were held by the various entities. There's no question that these greedy denizens of socialism made Donald Trump look like Mother Teresa.

Since the reformers who brought on capitalism and democracy in Russia consciously chose not to employ Bolshevik methods to pry assets loose, they "left 'red directors' in possession of all the economic assets and privileges that they enjoyed in Soviet times," observes Russia expert Leon Aron of the American Enterprise Institute.

Rejecting civil war, however, left the reformers with little choice but to privatize assets in a way that mitigated opposition from entrenched interests. The path chosen in the 1992–94 period was to award two-thirds of the ownership rights to workers and managers, with the remaining shares distributed via vouchers to 144 million Russians (each man, woman, and child). This strategy left company insiders in charge, immune to the pressure of outside shareholders or the threat of takeover. By 1996, just one-fifth of Russian firms featured majority shareholding by people outside the company they worked for.

History will record that the corruption of post-communist Russia handily outperformed the corruption of the USSR.

The result, in other words, was capitalism without capital markets. Bad things are bound to happen in such a scenario. And they certainly have in Russia, most notably the pilfering of firm assets (and the interests of minority shareholders) by firm management.

But far from demonstrating the inherent logic of capitalism, such unproductive shenanigans have been exacerbated by market reforms *not* taken. Price controls to avoid "shock therapy" led to political insiders brokering their access to cheap energy. Export licenses provided monopoly profits for the politically connected. Loans issued at below-market rates created a brisk business in currying favor with central bankers. And massive subsidies to inefficient factories further tilted the competitive struggle in favor of politics and away from economics.

So terrible things have befallen the former Soviet Union. But the overwhelming task of turning around an entire system of ownership rights while not killing anyone and while holding truly democratic elections is not a job for sissies.

Fortunately for the reformers, Soviet history set a low baseline for progress. With Gorbachev's communist economy as their starting point, Yeltsin's capitalists are actually making headway. A key metric on social progress is that Russian auto ownership has risen from 18 per 100 families in 1990 to 31 per 100 in 1997, a statistic that becomes all the more impressive when it is remembered what kind of jalopies those 18 lucky Soviet families owned in 1990. Here's another sign of progress: Average monthly wages, just $75 per worker in 1993, rose to $175 in 1997.

Buying off old communists has been an expensive proposition for the Russian people, but paying the ransom to avert a bloodbath was a wise and noble choice. To be sure, crony capitalism seriously underperforms what will obtain once real capital markets develop and bring about true competition. That will take further liberalization and more time.

But the biggest job has been done. As Anatoly Chubais, Russia's privatization guru, has put it, "Controlling managers is not nearly as important as controlling politicians." In the end, history will record that the corruption of post-communist Russia handily outperformed the corruption of the late—and strangely lamented—USSR.

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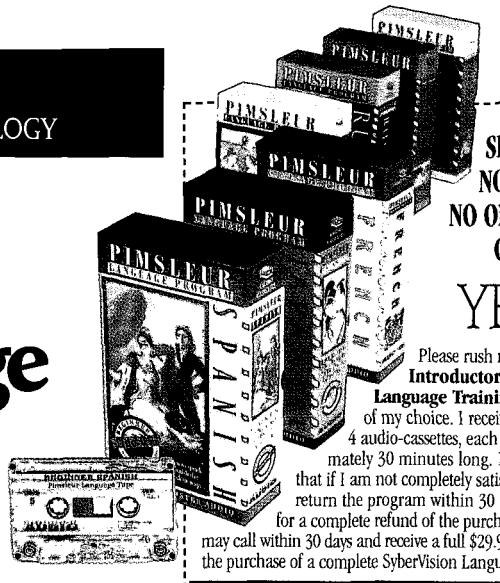

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